Central Administrative Tribunal
Principal Bench, New Delhi

C.P.No.104/2015 in O.A. No.2912/2009
C.P.No.105/2015 in O.A.No.3125/2009

Tuesday, this the 22nd day of September, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B. K. Sinha, Member (A)

C.P.No.104/2015

Mr. V P Munghate, IOFS
Additional General Manager
Ordnance Factor
Ambajhari, Nagpur – 440021

..Applicant

(Mr. S Aravindh, Advocate)

Versus

1. Mr. M C Bansal
   The Directorate General of Ordnance Factories/Chairman
   Ordnance Factories Board
   10 A Auckland Road, Kolkatta-1

2. Mr. G Mohan Kumar
   Secretary to Government of India
   Department of Defence Production
   Ordnance Factories Board
   South Block, New Delhi

..Respondents

(Mr. VSR Krishna and Mr. R K Jain, Advocates)

C.P.No.105/2015

Dr. Gopal Dutt Tewari, IOFS
Additional General Manager
OP to Electronic Factory
Dehradun-248008

..Applicant

(Mr. S Aravindh, Advocate)

Versus

1. Mr. M C Bansal
   The Directorate General of Ordnance Factories/Chairman
   Ordnance Factories Board
   10 A Auckland Road, Kolkatta-1

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..Respondents

(Mr. VSR Krishna and Mr. R K Jain, Advocates)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

In these present Contempt Petitions, the petitioners have alleged disobedience of the Order dated 22.9.2010 passed by this Tribunal in O.A. Nos. 2274/2009, 2273/2009, 3125/2009, 2351/2009, 2912/2009 and 2395/2009. In terms of the Order, this Tribunal directed the respondents to work out the seniority in question strictly as per the parameters fixed by the Chennai and Principal Benches of the Tribunal and if permissible under the law, to deal with the aspect of the case as mentioned in clause (g) of the seniority list dated 8/10.4.2009. Paragraph 8 of the Order reads thus:-

> "8. We have heard the learned counsel representing the parties and with their assistance examined the records of the case. We have hereinbefore mentioned in detail the directions given by the Chennai Bench in OA No.679/1991 in the matter of S. P. Saxena, and in OA Nos.2279/1995 and 2218/1995 in the matter of Narendra Kumar & others by the Principal Bench. The Chennai Bench in OA No.679/1991 was dealing with the case of one S. P. Saxena, who was not considered for promotion to the STS w.e.f. March, 1987, whereas his juniors were considered for promotion. Saxena was denied promotion as he had not completed four years of service in JTS, though he was admittedly senior as per ranking of UPSC. The Chennai Bench held the seniority as fixed by UPSC sacrosanct, and irrespective of the fact that he had not completed four years of service in JTS, inasmuch as his juniors were considered for promotion, Saxena could not have been ignored for promotion and thus had to be promoted along with his juniors as per seniority fixed by UPSC. The direction was thus to promote Saxena along with others, some of whom may be junior to him, or may be of his batch, irrespective of Saxena having not completed four years of requisite service for eligibility for promotion to STS. While implementing the judgment in Saxena's case, the department conducted review DPC in 1994 in which two applicants in OA Nos.2218/1995 and 2279/1995, i.e.,

Narendra Kumar and Prabhat Varma, lost their seniority on the ground that at the time of consideration for promotion, they had not completed their two years probation. Inasmuch as, their seniority was sought to be disturbed in implementing the order of the Chennai Bench, they filed the said two OAs in the Principal Bench. The only plea raised by them was that irrespective of their not completing two years probation period, they could not be ignored in the matter of promotion in preference to their juniors. The directions given by the Tribunal, as mentioned above, were to consider them for promotion, irrespective of their not completing two years of probation. The writ filed against the order of the Tribunal was dismissed by the High Court of Delhi. There is no doubt whatsoever that the judgments passed by the Chennai and the Principal Benches have to be implemented, but what we find from the pleadings and the impugned orders, and in particular order dated 8/10.4.2008, is that the respondents in the guise of implementing the directions of the Tribunal are attempting to recast the seniority by applying certain criteria which was not in the least the subject matter of discussion, consideration and decision in the orders passed by the Tribunal referred to above. We have already mentioned above that the specific plea raised repeatedly by the applicant on that behalf in the body of the OA has not been specifically refuted in the reply filed on behalf of the respondents. It is no doubt true that while passing the order/proceeding dated 4.2.2008 revising the seniority list of officers in the STS as on 1.1.1992, objections were invited from those who may be adversely affected, like the applicant and others. It is also true that the applicant gave his reply and his objections have been rejected vide impugned order dated 8/10.4.2008, but the question that may stare the parties on their face is as to whether such dimensions as mentioned in clause g) of the impugned order dated 8/10.4.2008 could be added in the purported exercise of implementing the judgments of this Tribunal in the OAs decided by the Chennai and the Principal Benches. The answer to the same has to be an emphatic 'NO'. The parties may have variety of arguments for and against the criteria for working out seniority in the grade of STS, but we are not inclined to go into the same at this stage. The respondents, in pure and simple exercise of implementing the judgments of this Tribunal, for which purpose alone a committee came to be constituted, cannot travel beyond anything that might have been directed in the orders passed by this Tribunal from time to time. If at this distance of time another criteria for fixing inter se seniority is to be worked out, the same has to be a subject matter of separate proceedings, which the respondents may do even now if the law may so permit, but surely, such an exercise cannot be undertaken in the guise of implementing the judgments of the Tribunal passed from time to time as mentioned above. Clause g) of the impugned order dated 8/10.4.2008, in our considered view, cannot be given effect to while implementing the judgments of the Tribunal. The respondents are thus directed to work out the seniority strictly as per the parameters fixed by the Chennai and Principal Benches of this Tribunal. If permissible under law, they may deal with the aspect of the case as mentioned in clause g) of the impugned order dated 8/10.4.2008 by separate proceedings.

Surely, while undertaking such an exercise, the respondents would always keep in mind as to whether it would be justifiable to do so at this distance of time."

2. To seek review of the Order, the Union of India filed separate Review Applications being R.A. No.57/2011 in O.A. No.2273/2009, R.A. No.59/2011 in O.A. No.2274/2009 as also R.A. No.174/2011 in O.A. No.2912/2009. The aforementioned three Review Applications were disposed of with the following Order:

"R.A.Nos.57/2011 and 59/2011

By a common order, six Original Applications were disposed of. However, in two of the OAs, review applications have been filed, which we propose to dispose of by this common order.

2. What primarily has been held by us is that the impugned orders cannot sustain inasmuch as, respondents in the guise of implementing the directions of this Tribunal were attempting to recast the seniority by applying certain criteria which were not in the least subject matter of discussion, consideration and decision in the orders passed by the Tribunal, which has been referred to in the judgments. In the impugned orders dated 08/10.04.2008 insofar as clause (g) is concerned, we observed that the same could not be added in the purported exercise of implementing the judgments of this Tribunal. We also mentioned that the parties may have variety of arguments for and against the criteria for working out seniority in the grade of STS, but we were not inclined to go into the same at that stage. The respondents, in pure and simple exercise alone a committee came to be constituted, could not travel beyond anything that might have been directed by this Tribunal from time to time.

3. In these review applications, clause (g) in the impugned order is sought to be justified on the basis of rules. No rules were pressed into service during the course of arguments in support of retaining clause (g) in the impugned order.

4. Be that as it may, we have already said that once we are not commenting anything on merits of clause (g) contained in the impugned order dated 08/10.04.2008, the question as to whether seniority can be worked out as per parameters mentioned in clause (g), if the law may so permit, has been left open.

5. We find no merit in these review applications which are dismissed in circulation.

R.A.No.174/2011

"Shri V.S.R. Krishna, learned counsel for applicant states by a common order dated 22.09.2010, six Original Applications were disposed of by this Tribunal. He further states that two RAs bearing RA No.57/2011 in OA 2273/2009 and RA No. 59/2011 in OA 2274/2009, which came to be filed, have been dismissed by this Tribunal, vide its order dated 03.03.2011.

2. For parity of reasons given by this Tribunal in order dated 03.03.2011 passed in RAs referred to above, the present RA is also dismissed in the same terms."

3. Thereafter the respondents issued fresh seniority list in terms of the communication dated 12.9.2014. Once after the Order passed by the Tribunal a fresh seniority list has been issued, irrespective of the correctness of the seniority list, Contempt Petitions would not lie.

4. As has been viewed by the Hon'ble Supreme Court in **J.S. Parihar** v. **Ganpat Duggar & others**, JT 1996 (9) SC 611, once pursuant to the directions given by the Tribunal the respondents have taken a final decision, though final decision may give rise to the fresh cause of action for instituting the fresh proceedings but they cannot be said to have disobeyed the directions of the Tribunal and the Department cannot be held guilty for Contempt of Court. Relevant excerpt of the said judgment is reproduced hereinbelow:-

"4. The State had filed appeal against these directions. A preliminary objection was taken on the maintainability of the appeal and also arguments were advanced. The Division Bench while holding the appeal as not maintainable under Section 19 of the Act, held that the appeal would be maintainable as a Letter Patent Appeal as the direction issued by the learned single Judge would be a judgment within the meaning of Clause (18) of the Rajasthan High Court Ordinance. Accordingly the Division Bench set aside the directions issued by the learned single Judge. Thus these appeals by special leave.

5. The question is: whether an appeal against the directions issued by the learned single Judge is maintainable under Section 19 of the Act? Section 19 of the Act envisages that "an appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt where the order or decision is that of a single Judge, to a bench of not less than two Judges of the Court." Therefore, an appeal would lie under Section 19 when an order in exercise of the jurisdiction of the High Court punishing the contemner has been passed. In this case, the finding was that the respondents had not willfully disobeyed the order. So, there is no order punishing the respondent for violation of the orders of the High Court. Accordingly, an appeal under Section 19 would not lie.

6. 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, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision take 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 willfully 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 willful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh 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. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench.

7. The appeals are accordingly dismissed. It may be open to the aggrieved party to assail the correctness of the seniority list prepared by the State Government, if it is not in inconformity with the directions issued by the High Court, if they so advised, in an appropriate forum. No costs."

5. A similar view has been taken by the Apex Court in a very recent judgment in **Bihar State Govt. Sec. School Teachers Association** v. **Ashok Kumar Sinha & others**, (Contempt Petition (C) Nos.88-89 of 2013 in Civil Appeal Nos.8226-8227 of 2012) decided on 7.5.2014. Relevant excerpt of the said judgment reads as under:-

"15. Mr. Rao referred to the following judgments:

J.S. Parihar v. Ganpat Duggar and others, [1996 (6) SCC 291]

"6. 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. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench."

Indian Airports Employees Union v. Ranjan Chatterjee and Another, [(1999) 2 SCC 537]

"7. It is well settled that disobedience of orders of the court, in order to amount to 'civil contempt' under Section 2(b) of the Contempt of Courts Act, 1971 must be 'willful' and proof of mere disobedience is not sufficient (S.S. Roy v. State of Orissa). Where there is no deliberate flouting of the orders of the court but a mere misinterpretation of the executive instructions, it would not be a case of civil contempt (Ashok Kumar Singh v. State of Bihar).

8. In this contempt case, we do not propose to decide whether these six sweepers do fall within the scope of the notification dated 9-12-1976 or the judgment of this Court dated 11-4-1997. That is a question to be decided in appropriate proceedings.

9. It is true that these six sweepers' names are shown in the annexure to WP No. 2362 of 1990 in the High Court. But the question is whether there is wilful disobedience of the orders of this Court. In the counter-affidavit of the respondents, it is stated that there is no specific direction in the judgment of this Court for absorption of these sweepers, if any, working in the car-park area, and that the directions given in the judgment were in relation to the sweepers working at the International Airport, National Airport Cargo Complex and Import Warehouse. It is stated that the cleaners employed by the licensee in charge of maintenance of the car-park area do not, on a proper interpretation of the order, come within the sweep of these directions. It is contended that even assuming that they were included in the category of sweepers working at the International Airport, inasmuch as they were not employed for the purpose of cleaning, dusting and watching the buildings, as mentioned in the notification abolishing contract labour, they were not covered by the judgment. It is also contended that the case of such sweepers at the car-park area was not even referred to the Advisory Board under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and it was highly doubtful if they were covered by the notification.

10. On the other hand, learned Senior Counsel for the petitioners contended that going by the map of the Airport, it was clear that these sweepers at the car-park area were clearly

covered by the notification and the judgment. The fact that the names of these six employees were shown in the annexures to the writ petition was proof that they were covered by the judgment. The licensee is in the position of a contractor.

11. In our view, these rival contentions involve an interpretation of the order of this Court, the notification and other relevant documents. We are not deciding in this contempt case whether the interpretation put forward by the respondents or the petitioners is correct. That question has to be decided in appropriate proceedings. For the purpose of this contempt case, it is sufficient to say that the non-absorption of these six sweepers was bona fide and was based on an interpretation of the above orders and the notification etc. and cannot be said to amount to 'wilful disobedience' of the orders of this Court."

All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi and others, [(2009) 5 SCC 417]

"78. We may now notice some judgments in which the courts have considered the question relating to burden of proof in contempt cases. In Bramblevale Ltd., Re Lord Denning observed: (All ER pp. 1063 H-1064 B)

> "A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.
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> Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt."

79. In Mrityunjoy Das v. Sayed Hasibur Rahaman the Court referred to a number of judicial precedents including the observations made by Lord Denning in Bramblevale Ltd., Re and held: (SCC p. 746, para 14)

> "The common English phrase 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt."

> 80. In Chhotu Ram v. Urvashi Gulati a two-Judge Bench observed: (SCC p. 532, para 2)
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> > "2. As regards the burden and standard of proof, the common legal phraseology 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt."
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> 81. In Anil Ratan Sarkar v. Hirak Ghosh the Court referred to Chhotu Ram v. Urvashi Gulati and observed: (SCC p. 29, para 13) "The Contempt of Courts Act, 1971 has been introduced in the statute book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country" undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute."
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19. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these Contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance of the directions given in the judgment, this Court is not supposed to go into the nitty gritty of the various measures taken by the Respondents. It is also correct that only if there is willful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. We can certainly go into the issue as to whether the Government took certain steps in order to implement the directions of this Court and thereafter withdrew those measures and whether it amounts to non-implementation. Limited inquiry from the aforesaid perspective, into the provisions of 2014 Rules can also be undertaken to find out as to whether those provisions amount to nullifying the effect of the very merger of BSES with BES. As all these aspects have a direct co-relation with the issue as to whether the directions are implemented or not. We are, thus, of the opinion that this Court can indulge in this limited scrutiny as to whether provisions made in 2014

> Rules frustrate the effect of the judgment and attempt is to achieve those results which were the arguments raised by the respondents at the time of hearing of C.A. No. 8226-8227 of 2012 but rejected by this Court. To put it otherwise, we can certainly examine as to whether 2014 Rules are made to implement the judgment or these Rules in effect nullify the result of merger of the two cadres."

6. In view of the aforementioned, we do not find any willful disobedience of the Order passed by the Tribunal. Contempt Petitions are accordingly dismissed. Notices issued to the respondents stand discharged. It goes without saying that the petitioners herein would be at liberty to assail the fresh seniority list in accordance with law, if so advised. No costs.

A copy of this Order be placed in both the files.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

September 22, 2015
/sunil/