

**Central Administrative Tribunal  
Principal Bench**CP No. 518/2015 in  
OA NO. 3973/2012Order reserved on: 18.03.2016  
Order pronounced on: 21.04.2016***Hon'ble Mr. V. N. Gaur, Member (A)***  
***Hon'ble Dr. Brahm Avtar Agrawal, Member (J)***Pawan Kumar Tyagi  
S/o Sh. Ram Swarup Singh  
R/o C 5B/39B, Janakpuri,  
New Delhi-110058.

- Applicant

(By Advocate: Sh. D.C.Vohra)

Versus

1. Sh. K.K.Sharma,  
Chief Secretary,  
Delhi Govt. Secretariat,  
Indraprastha Estate,  
New Delhi-110002.
2. Sh. Amar Nath  
Principal Secretary/Medical,  
Govt. of NCT of Delhi  
Technical Recruitment Cell  
9<sup>th</sup> Level "A" Delhi Govt. Sectt.  
New Delhi-110002.
3. Dr. M.M.Mandiratta,  
Director,  
Janakpuri Superspeciality Hospital,  
C2B, Janakpuri,  
New Delhi-110058.

- Respondents

(By Advocate: Sh. R.K.Agnihotri)

**ORDER****Hon'ble Shri V.N.Gaur, Member (A)**

The present CP has been filed by the applicant alleging contempt of this Tribunal's order dated 16.09.2014 in OA No.3973/2012. The operative part of the aforementioned order is reproduced below:

"3. In view of the aforementioned, the controversy involved in the present OA appears to be in all fours of the decision dated 01.07.2013 taken by the Hon'ble Delhi High Court in WP(C) No.2641/2010, thus the O.A. is disposed of with the direction to the respondents to examine the claim of the applicant for restoration of the financial upgradation keeping in view of aforementioned judgments as early as possible preferably within eight weeks from the date of receipt of a copy of this order under intimation to the applicant. No costs."

2. Learned counsel for the applicant submitted that according to the order of this Tribunal in OA No.169/2009 dated 15.09.2009 the first ACP to the Lab Technicians and Technical Assistants working in hospital/medical institutions under Health and Family Welfare Department of Govt. of NCT of Delhi in the scale of Rs.4500-7000 (pre-revised) was granted in the pay scale of Rs.5500-9000. The Writ Petition No.2641/2010 against this order was dismissed by Hon'ble High Court of Delhi by order dated 01.07.2013 and as a result the Govt. of NCT of Delhi implemented the decision vide order dated 19.12.2014. However, the respondents have denied that benefit to the applicant despite being similarly situated. Following the order of this Tribunal in the main OA, the respondents issued an order dated 12.02.2015

granting to the applicant second ACP in the grade of Rs.5500-9000. This was in fact against the order of the Tribunal because applicant was entitled for the scale of Rs.5500-9000 (pre-revised) as the first ACP and not the second ACP. The applicant has made several representations for the rectification of this error and, thereafter, granting second ACP and MACP, release of gratuity along with interest, and re-fixation of pension, but the respondents have not taken any action. Referring to the counter filed by the respondents learned counsel stated that it was an established principle of law that if the respondents delayed the payment of gratuity and other retirement benefits beyond the reasonable time, they were duty bound to pay interest on the amount, payment of which had been delayed. The withholding of an amount of Rs.96862/- is, therefore, illegal.

3. Learned counsel for the respondents, on the other hand, submitted that there was no contumacious act on behalf of the respondents while following the order of this Tribunal. The respondents had been directed to examine the claim of the applicant in terms of order of Hon'ble High Court in WP (C) no.2641/2010 and the same has been done. The respondents have found that the aforementioned order of the Hon'ble High Court is not applicable to the applicant who was actually Lab Assistant when the first ACP and second ACP were granted to him while the petitioners in the High Court's order were Technicians.

The applicant was appointed in the scale of Rs.4000-6000 and granted first ACP in the scale of Rs.4500-7000 w.e.f. 09.08.1999 and second ACP in the scale of Rs.5000-8000 w.e.f. 13.09.2000. He was promoted to the grade of Lab Technician by order dated 10.11.2010. The applicant had to be, therefore, given first ACP to the grade of Lab Assistant, second ACP to the grade of Technician (Lab.) and then, MACP to the grade of Technical Assistant (Lab.). The respondents have accordingly passed the detailed order on 10.02.2015 fixing his pay in the aforesaid manner till his date of retirement. Learned counsel further submitted that in a contempt petition the Court has to decide whether there was any wilful disobedience of the order of the Court. In this case there is nothing alleged by the applicant that can be classified as a wilful disobedience on the part of the respondents.

4. We have heard the learned counsels and perused the record. This Tribunal in its order dated 16.09.2014 in OA 3973/2012 had directed the respondents to examine the claim of the applicant for restoration of the financial upgradation keeping in view the order of Hon'ble High Court in WP (C) no.2641/2010. The Hon'ble High Court in its order dated 01.07.2013 upheld the order of this Tribunal dated 15.09.2009 in OA No.169/2009 stating as under:

“8. In our view, the simple logic would be that where a feeder cadre post and a promotional post are placed in the same pay scale ACP benefit has to be in the next above pay scale; be it in the hierarchy of posts or the next above pay scale.

9. In the instant case the undisputed position is that whether it is the hierarchy of posts or the next above pay scale, above the pay scale of Rs.4500-7000 is the pay scale of Rs.5500-9000; this is the pay scale in which ACP benefit has been directed to be granted to the respondents as per the impugned decision dated September 15, 2009."

5. The OA No.169/2009 was filed by Delhi Medical Technicians and Employees Association (Regd.) through its Principal Secretary and Mr. Ramesh Kumar, Lab Technician, Pathology Department, Maulana Azad Medical College. The OA was disposed of with a direction to the respondents "to grant applicants first financial upgradation in the pay scale of Rs.5500-9000 from the date it is respectively due to them with arrears within a period of three months from the date of receipt of a copy of this order." It is thus clear that the order of this Tribunal in OA No.169/2009 and Hon'ble High Court in WP (C) no.2641/2010 are related to the grant of first ACP to the Lab Technicians and Technical Assistants to the pay scale of Rs.5500-9000. The applicant admittedly was a Lab Assistant in the grade of Rs.4000-6000 on 09.08.1999 when the first ACP was granted in the pay scale of Rs.4500-7000. Therefore, we do not find that the order of the Hon'ble High Court would be applicable in his case. However, in compliance of this Tribunal's order in CP No.393/2010 in OA No.169/2009 dated 22.12.2014 after the order of the Tribunal was upheld by the Hon'ble High Court, the respondents have passed the order dated 12.02.2015. Even though the order dated 12.02.2015 does not mention the Tribunal's order dated 16.09.2014, the claim of the

applicant has been examined in the light of the order in OA 169/2009 as upheld by the Hon'ble High Court. We, therefore, do not find any wilful disobedience on the part of the respondents.

6. In **J.S.Parihar vs. Ganpat Duggar and others**, (1996) 6

SCC 291 the Hon'ble Supreme Court observed thus:

"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 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, afresh direction by the learned single judge cannot be given to redraw the seniority list."

7. The present CP is, therefore, devoid of merit and the same is dismissed. Noticees are discharged.

(Brahm Avtar Agrawal )  
Member (J)

(V.N. Gaur)  
Member (A)

April 21, 2016

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