

Central Administrative Tribunal
Principal Bench
New Delhi

C.P.No.523/2015
in
O.A.No.4114/2012

Order Reserved on: 28.07.2016
Order pronounced on 08.08.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. Birendra Kumar Sinha, Member (A)

Azad Singh
s/o Shri Nafe Singh
R/o D-1/30, Budh Vihar
Phase-I, Delhi – 86. Applicant

(By Advocate: Sh. Yogesh Sharma)

Versus

1. Sh. K.K.Sharma
Chief Secretary
Govt. of NCT of Delhi
New Secretariat, New Delhi. ... Respondent

(By Advocate: Sh. Vijay Pandita)

ORDER

By V. Ajay Kumar, Member (J):

The applicant filed OA No.4114/2012 questioning the disciplinary and appellate orders in imposing a penalty of reduction in pay by two stages in the time scale of pay for a period of two years, with further direction that he will not earn increments of pay during the period of

reduction. This Tribunal, after hearing both sides and for the reasons mentioned therein, allowed the OA vide order dated 26.02.2014 as under:

"10. In the circumstances and for the aforesaid reasons, the OA is allowed and the orders passed by the disciplinary authority and the appellate authority are quashed and set aside, with all consequential benefits. No order as to costs."

2. When the respondents failed to comply with the aforesaid orders, he filed the present CP. However, the respondents vide order No.2 dated 04.01.2016 promoted the applicant in Grade I DASS w.e.f. 07.02.2011, i.e., from the date on which his junior was promoted, however, notionally.

3. Heard Shri Yogesh Sharma, the learned counsel for the applicant and Shri Vijay Pandita, the learned counsel for the respondents, and perused the pleadings on record.

4. Shri Yogesh Sharma, the learned counsel appearing for the petitioner while not disputing the fact of promotion of the applicant w.e.f. 07.02.2011, however, submits that not granting actual monetary benefits from the said date amounts to violation of the orders of this Tribunal and accordingly prays for punishing the respondents for contempt of court order.

5. It is further submitted by the learned counsel that once this Tribunal while allowing the OA granted all consequential benefits, the

petitioner is entitled for payment of arrears in the promoted post w.e.f. 07.02.2011.

6. Shri Vijay Pandita, the learned counsel for the respondents while submitting that the respondents have fully complied with the orders of this Tribunal submits that the applicant is not entitled for payment of arrears either as per the orders of this Tribunal or of law, and hence, prays for dismissal of the CP.

7. 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 efforts 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."

8. 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 said OA and whether the action of the respondent in holding that the petitioner is not entitled for arrears, is in accordance with law.

9. 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."

10. 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.

11. 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."

12. 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 had not considered the issue to the best of their understanding and the same is not in accordance with law.

13. In the circumstances, and for the aforesaid reasons, we do not find any willful or deliberate violation of the orders of this Tribunal by the respondents and accordingly, the CP is closed. Notices are discharged. No order as to costs.

(Dr. Birendra Kumar Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

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