

**Central Administrative Tribunal
Principal Bench**

C.P. No.536/2015 in
O.A. No.2094/2011

Order reserved on: 25.05.2016
Order pronounced on: 13.07.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

1. Gazetted Officers Forum Technical Education Delhi
Through its President
Shri Om Prakash Singh,
Registered office at H-31, B.K. Dutta Colony,
New Delhi-110033.
2. Om Prakash
S/o Late Shri R.P. Singh,
Gazetted Officers Forum Technical Education Delhi
H-31, B.K. Dutta Colony, New Delhi-110033.

- Applicants

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

Versus

1. Sh. K.K.Sharma,
Chief Secretary,
Govt. of NCT of Delhi,
Delhi Secretariat, I.P. Estate,
New Delhi.
2. Ms. Puniya Salila Srivastava,
Secretary (Technical Education),
(Erstwhile Pr. Secretary-cum-Director),
Department of Training & Technical Education,
Govt. of NCT of Delhi, Muni Maya Ram Marg,
Pitam Pura, Delhi-110088.

- Respondents

(By Advocates: Sh. Vijay Pandita)

O R D E R

Mr. V.N. Gaur, Member (A):

The applicant has filed the present CP with a prayer to take action against the respondents in OA No.2094/2011 for non-compliance of this Tribunal's order dated 24.02.2014 and for issuing direction to the respondents - contemnors to comply with those directions. OA No.2094/2011 was filed by the applicants with the following prayer:

- “a) Refer the matter to a larger bench in the light of decision of the Hon'ble High Court in the same matter as per its order dated 25-3-2011;
- b) quash the operation of the impugned order dated 13-8-2010 passed in OA No.2573 of 2010;
- c) quash the operation of the impugned order dated 19-5-2011 of the respondents granting promotion to the respondent o.7.
- d) direct the respondents to conduct DPC for the post of HOD (Electrical Engineering) as per the AICTE guidelines implemented with effect from 1986 and revised recruitment rules of 2003 taking essential qualification as Masters Degree in Mechanical Engineering.”

2. When the matter came up for hearing on 04.02.2014 the learned counsel for the applicant did not press the prayer clauses a), b) & c). The Tribunal then passed a consent order by directing the respondents to take action as given in para 5 of the order extracted below:

“5. In view of the stand taken by the learned counsel for respondent nos.1 to 4, the OA is disposed of with direction to the respondents to consider the applicants for their promotion as expeditiously as possible, preferably within a period of six months. Prayers contained in clause 8 a), b) and c) of the OA are rejected as not pressed. No cost.”

3. The respondents thereafter did not take any action on the direction of the Tribunal dated 04.02.2014 despite a series of reminders by the applicant. Finally after filing of this contempt petition, the respondents passed an order on 05.05.2016 rejecting the case of promotion of the applicant no.2 & 3 in the OA to the post of Head of the Department (HOD) (Electrical Engineering).

4. Learned counsel for the applicants submitted that it was a clear defiance of the order of this Tribunal by the respondents, which was passed with the consent of the learned counsel for the respondents. The applicant no.2 who happened to be the President of Gazetted Officers Forum and working on the post of Lecturer (Selection Grade), was also given the charge of Electrical Department as HOD on officiating basis in the year 2008 against a clear vacancy. On behalf of the respondents a statement was made before this Tribunal that the applicants were required to be considered for promotion in accordance with the recruitment rules in vogue in 2008 and from the date of occurrence of vacancies or being assigned the charge. Now, instead of complying with the Tribunal's unambiguous direction to consider the applicants for promotion as

expeditiously as possible preferably within a period of 6 months, the respondent-contemnors, after more than 2 years, have passed an order rejecting the promotion of the applicants in violation of the direction of this Tribunal and hence contempt proceedings be initiated against the respondentscontemnors under the Contempt of Courts Act.

5. Learned counsel for the respondents, on the other hand, submitted that the direction of this Tribunal was only for consideration of the applicants for promotion and it was not a direction for granting promotion. Respondents in the OA had considered these applicants and detailed order was passed on 05.05.2016. Though there was delay in passing the order due to some unavoidable reasons, learned counsel submitted, the matter had been examined in detail keeping in view the AICTE norms and various court judgments. The respondents had no intention of violating the orders of this Tribunal. Relying on **J.S.Parihar vs. Ganpat Duggar and others**, (1996) 6 SCC 291, learned counsel submitted that once the respondents have passed an order on the basis of the direction issued by the Tribunal, the petitioners have a fresh cause of action. There is no wilful disobedience of the directions of this Court and, as such, there was no case for

action under the Contempt of Courts Act against the respondents -contemnors.

6. Learned counsel for the petitioners has submitted a rejoinder also. In the rejoinder referring to the recruitment rules of 2003 it has been again argued that the promotional mode of recruitment is the only source of recruitment in terms of the notified recruitment rules as it existed on the date of vacancy. The respondents had earlier promoted several Lecturers some of them were even junior to the applicants. The case of the applicants ought to have been considered similarly.

7. We have heard the learned counsel for the parties and perused the record. The prayer made in OA No.2094/2011 in clause (d) was to direct the respondents to conduct DPC for the post of HOD (Electrical Engineering) as per the AICTE guidelines implemented with effect from 1986 and revised recruitment rules of 2003. During the course of hearing on 04.02.2014 learned counsel for the applicant did not press for relief contained in clauses (a), (b) & (c) and submitted that he would be satisfied if the applicants were considered in terms of the prayer in clause (d). Learned counsel for the respondents also expressed his consent to consider the eligible candidates including the applicants in

accordance with the recruitment rules invogue at the time of occurrence of the vacancies. Now the respondents have passed an order in which they have given detailed reasons for not being able to consider the applicants for the post of HOD (Electrical Engineering). They have drawn attention to the provisions contained in the AICTE Regulations 2010 which provides that the scheme with regard to faculty norms, revised pay scales, qualifications, recruitment methods etc. are to be accepted as a package. In other words, if the pay scales have been accepted, it follows that the qualifications and recruitment methods will also have to be accepted as provided in the Regulations of 2010. According to the learned counsel for the applicant, as mentioned in rejoinder also, the case of the applicant has to be considered in terms of the recruitment rules of 2003. However, in the contempt jurisdiction, the Tribunal has to see whether there has been any wilful disobedience on the part of the respondents. On this issue the Hon'ble Supreme Court in **J.S.Parihar** (supra) has observed as follows:

“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. 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.”

8. It is apparent that the respondents have considered the case of promotion of the applicants as directed by the Tribunal on 04.02.2014. According to their perspective it is not possible for them to promote the applicants to the post of HOD (Electrical Engineering). Their perception may be wrong; however, once they have taken a view in compliance of the directions of this Tribunal, it is clear that there is no wilful disobedience on their part. The order passed by the respondent contemnors, if not satisfactory to the applicants, will give a fresh cause of action.

9. In this view of the matter, we do not find any wilful disobedience of the order of this Tribunal by the respondents. The contempt petition is therefore closed and the noticees are discharged. The applicants will be at liberty to question the order dated 05.05.2016 in a fresh OA, if so advised.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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