

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**CP 547/2015
in
OA 1406/2013**

Reserved on: 29.07.2016
Pronounced on : 22.09.2016

HON'BLE MR. V.N.GAUR, MEMBER (A)
HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)

Paramjeet Singh,
S/o Sh. R.P. Singh,
R/o 2139/31, Indian Colony,
Gali No.3, Gohan Rd. Bypass.
Sonapat.

.... Applicant

(By Advocate: Mr. Shrigopal Aggarwal)

VERSUS

Shri G. Mohan Kumar,
Secretary,
Ministry of Defence,
Room No.101-A, South Block,
New Delhi.

.... Contemnor

(By Advocate: Mr. Manjeet Singh Reen)

ORDER

Hon'ble Mr.V.N.Gaur, Member (A):

The applicant has filed this Contempt Petition in OA No. 1406/2013 which was disposed of by this Tribunal on 17.11.2014 with the following directions:-

"12. In the light of the above discussion, we issue the following directions:

- (1) Respondent no.1 shall make a reference to the Department of Personnel & Training to re-examine the matter in the light of the order passed by the Ernakulam Bench of the Tribunal in Senthil Kumar M's case (supra) and take appropriate decision in the matter;

- (2) Respondent no.1 shall re-consider the claim of the applicant in accordance with the decision taken by the DoP&T on the said reference and pass a speaking order which shall be communicated to the applicant;

And

- (3) The entire exercise shall be completed within a period of three months from today."

2. According to learned counsel for the applicant the time limit for compliance of the aforementioned order expired on 16.05.2015 after an extension of time for 3 months and a request for extending the time further through MA No.576/2014 was also dismissed by the Tribunal. The order passed by the respondents on 16.05.2016 can not be treated as compliance because, firstly, it was passed much after the expiry of the time granted by the Tribunal and, secondly, by an administrative order the respondents can not overrule the order of the Tribunal which had directed to extend the benefit of Senthil kumar M's case to the applicant. The learned counsel relied on the judgment of Hon'ble Supreme Court in **State of Haryana and others vs. Ram Kumar and others**, (2002) 9 SCC 703. According to the learned applicant, it is an intentional and deliberate act on the part of respondents to defy and violate the order of the Tribunal dated 17.11.2014. He further argued that the respondents can not take shelter of **J.S. Parihar Vs. Ganpat Duggar and Ors** (1996) 6 SCC 291) as the facts of the present case are entirely different.

3. The learned counsel for the respondents submitted that the respondents were sincere in their efforts to implement the directions given by the Tribunal in the order dated 17.11.2014. In compliance of

that order, a reference was made to the Department of Personnel & Training to re-examine the matter in the background of the order passed by Ernakulam Bench in Senthil Kumar M's case. However, the DoP&T informed that Department of Revenue where Shri Senthil Kumar M. was working had filed a Writ Petition in the Hon'ble High Court of Kerala with an interim prayer to stay all proceedings pursuant to the order dated 28.11.2011 in Senthil Kumar M's case (supra). Accordingly, the respondents passed a speaking order on 18.02.2016 in compliance of the directions of this Tribunal. Though, in para 10 of that order, it was stated that representation of the applicant dated 22.04.2013 stood disposed of "as per the directions given by Hon'ble CAT (PB), New Delhi." it was not specifically mentioned that the speaking order was passed after examining Senthil Kumar M's case. The respondents passed another order on 16.05.2016 which deals with the representation of the applicant on merit and also refers to the fact that Senthil Kumar M's case is under challenge before the Hon'ble High Court of Kerala along with an interim prayer for stay. Since the Ernakulam Bench order is itself under challenge, the applicant in this OA could not have been given that benefit. The respondents, therefore, have complied with the order dated 17.11.2014. In terms of the law laid down by Hon'ble Supreme Court in **J.S. Parihar Vs. Ganpat Duggar and Ors** (1996) 6 SCC 291), **Security Finance Pvt. Ltd. and Anr Vs. Dattatraya Raghav Agge and Ors** (AIR 1970 SC 720), a co-ordinate Bench of Tribunal (Guwahati Bench) in **Tapan Sutradhar Vs. Raghu Menon and Ors** (AISLJ 2011 (3) CAT 168), and Full Bench order in **Mr. D.P. Bhatia Vs. Mr. Shakthikant Das,**

Secretary, Ministry of Finance and others in CP No. 270/2014 in OA 1649/2013, there is no case of contempt against the respondents.

4. We have heard the learned counsel for the parties and perused the record. In order dated 17.11.2014, this Tribunal had directed the respondents (i) to make a reference to the DoP&T to re-examine the matter in the light of the order passed in Senthil Kumar M's case and take appropriate decision, (ii) then re-consider the case of the applicant in accordance with the decision taken by DoP&T and (iii) pass a speaking order within a period of three months. The Misc. Application No. 576/2015 filed by the respondents seeking further extension of time after the first 3 months extension was dismissed. However, in its order dated 9.10.2015, this Tribunal directed the respondents to submit compliance within six weeks. On 26.11.2015, the Tribunal noted the submissions of the respondents that DoP&T had informed about the challenge of Senthil Kumar M's case before the Hon'ble High Court of Kerala and the respondents were directed to ascertain the latest position of the case. Thereafter the respondents passed a speaking order dated 18.02.2016 in compliance of the order of the Tribunal, from that speaking order it was not clear whether the respondents had considered the order in Senthil Kumar M's case, and whether Hon'ble High Court of Kerala had issued any stay order against the order of the Ernakulam Bench. The Respondents thereafter filed a compliance report on 30.05.2016 enclosing a copy of the fresh speaking order dated 16.05.2016, which takes note of Senthil Kumar M's case. It has also been brought out that Hon'ble High Court of Kerala had issued notice in Misc. Application for stay of the order of the Ernakulam Bench.

5. This Tribunal in the order of Full Bench dated 06.01.2016 in **Mr. D.P. Bhatia Vs. Mr. Shakthikant Das, Secretary, Ministry of Finance and others** in CP No. 270/2014 in OA 1649/2013, has considered the following question:

“In the absence of any stay granted by the Hon’ble High Court or the Hon’ble Supreme Court against the order of this Tribunal or any other direction(s) in that regard, whether this Tribunal is restrained from initiating contempt proceedings against the alleged contemnors for not complying with the order(s) of this Tribunal”.

6. After considering its judgment in **Ram Avadh Singh V. Lalji Yadav and Others** (Special Leave to Appeal (Crl.) No.2253/2000), the Full Bench has answered the above question in terms of that judgment. The judgment of Hon’ble Supreme Court in **Ram Avadh Singh** reads as follows:-

“Leave granted.

After hearing the counsel for the parties, we are of the opinion that this is not a fit case where proceedings for contempt should have been initiated especially in view of the fact that against the judgment which was delivered against the appellant an appeal had been filed and neither the appeal nor even the stay application has been decided. In view of the pendency of the said stay application, the contempt proceedings are ordered to be withdrawn. If the stay application is dismissed, it would then be open to the respondents to take further action. The High Court should disposed of the stay application as expeditiously as possible and without granting any further adjournment.

The appeal is disposed of.”

7. The document filed by the respondents show that in Senthil Kumar M’s case Ministry of Finance have filed a Writ Petition in Hon’ble High Court of Kerala along with an application for stay in which notice has been issued. In Ram Avadh Singh’s case (supra), the Hon’ble Supreme Court has taken a view that when the stay application is

pending, a contempt proceeding in the matter cannot be pursued simultaneously. In the present case, though the respondents have not challenged the order dated 17.11.2014 in OA 1406/2013, but once the order in Senthil Kumar M's is under challenge in Hon'ble High Court and a stay application is pending, a contempt proceeding is not maintainable in the present case also.

8. Further viewing from the angle of compliance, the order dated 17.11.2014 had given three directions as mentioned earlier in this order. The respondents made a reference to the DOPT, who examined the matter in the background of Senthil Kumar M's case after consulting the Ministry of Finance and took a decision not to proceed with granting of that benefit to the applicant since there was a writ pending against that order. The respondents considered that decision of the DOPT and passed a speaking order. We do not find any wilful disobedience of this Tribunal's order by the respondents. The learned counsel for the respondents has relied on J.S. Parihar's case (supra) which has been contested by the learned counsel for applicant, stating that the facts of J.S. Parihar's case are quite different from the facts of the present case. He has referred to **UOI and anr vs Arulmozhi Iniarasu and others**, (2011) 7 SCC 397 in which Hon'ble Supreme Court has held that Court should not place reliance on decisions without discussing as to how fact situation of a case before it fits in with the fact situation or decision on which reliance is placed. We do not find the submissions of the learned counsel convincing, as the law laid down in J.S.Parihar's case is not specific to the factual situation obtaining in that case. The Hon'ble Supreme Court has observed in unambiguous terms that "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 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 an opportunity of judicial review. However that cannot be considered to be wilful disobedience of the order.” The *ratio deci dendi* of the judgment is that the order passed by the respondents in compliance of the order of the Court, becomes a fresh cause of action. In the present case also, the respondents have already passed a speaking order on 16.05.2016 though after more than one year and five months of the time granted by this Tribunal. The delay, however, does not change the factual situation that the order in Senthil Kumar M’s case which was the basis for the order dated 17.11.2014 has been challenged in the Hon’ble High Court of Kerala and a notice have been issued in the stay application as well.

9. Considering the facts and legal position discussed in the preceding paragraphs, we do not find any wilful defiance of the order of this Tribunal on the part of the respondents. The Contempt Petition is, therefore, dismissed. No order as to costs.

(RAJ VIR SHARMA)
MEMBER (J)

(V.N. GAUR)
MEMBER (A)