

**Central Administrative Tribunal  
Principal Bench**

CP No. 637/2015 in  
OA NO. 371/2011

Order reserved on: 06.04.2016  
Order pronounced on: 06.05.2016

***Hon'ble Mr. V. N. Gaur, Member (A)  
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)***

1. Sh. Avinash Kumar Tiwari  
S/o Late Sh. V.K.Tiwari,  
R/o Parsvnath Pratibha, B-114,  
Plot no.11 & 12, Sector-4, Delhi Road,  
New Moradabad (U.P.)
2. Sh. Raj Kumar  
S/o Late Sh. Ayodhya Singh,  
R/o A-208, Parsvnath Majestic,  
18-A, Vaibhav Khand, Indrapuram,  
Ghaziabad, (U.P.)
3. Sh. Vikas Saxena  
S/o Sh. S.D.Saxena  
R/o 43, West Shivaji Nagar,  
Shahganj,  
Agra (U.P.)
4. Sh. H.K.Rathi  
S/o Sh. A.S.Rathi  
R/o 203 Ushma Urja,  
Sector-62, Noida, (U.P.)
5. Shri Anoop Kumar Srivastav  
S/o Late Sh. Lal Ji Sahai  
R/o F-3, Sector-56,  
Noida, (U.P.)
6. Sh. Kshamashankar Ramachandra Pandey  
S/o Sh. Ramchandra Pandey  
R/o TF-33, Vardan Apartment-2,  
Abhay Khand-3, Indrapuram,  
Ghazaibad (U.P.)



2. Sh. Shaktikanta Das,  
Secretary,  
Ministry of Finance, Deptt. of Revenue,  
North Block, New Delhi-110001
3. Sh. Najib Shah,  
Chairman,  
Central Board, Central Excise & Service Tax,  
Dept. of Revenue, Ministry of Finance,  
New Delhi-110001
4. Sh. Chander Bhan,  
Chief Commissioner (Customs)  
(Cadre Controlling Authority-NZ),  
Customs Central Excise & Service Tax,  
Lucknow, 7-A, Ahok Marg, Lucknow (UP)

- Respondents

(By Advocates: Sh. Arun Bhardwaj, Sh. Gyanendra Singh and Sh. Piyush Gaur)

### **ORDER**

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

The present CP has been filed by the petitioners alleging disobedience of the order of this Tribunal dated 07.03.2013 in OA No.371/2011. The operative portion of the aforementioned order reads as follows:

“22. In view of the aforementioned facts and circumstances, particularly, the law declared by Hon'ble Supreme Court, Hon'ble High Court and the view taken by this Tribunal, it is ordered:-

(i) The exercise of examination undertaken in terms of letter dated 15.02.2012 shall be completed as expeditiously as possible preferably within a period of 6 months from the date of receipt of a copy of this order. While doing so, respondents would keep in view the law declared by Hon'ble Supreme Court in **M. Nagaraj Vs. Union of India and Ors** (2006)8 SCC 212), **U.P.Power Corporation Ltd. Vs. Rajesh Kumar & Ors** ( Civil Appeal No. 2608/2011), the provision of Article 335 of the

Constitution, as well as the contentions put forth on behalf of the applicants, noted hereinabove.

(ii) Till the aforementioned exercise is completed, the operation of the impugned Establishment orders No. 1/A/CCSC/88/2010 dated 10.09.2010 and 1/A/CCSC/93/2010 dated 30.09.2010 (Annexures A-2 and 3), would be held in abeyance.”

2. The main emphasis of the argument of counsel for petitioners has been that despite unambiguous order of the Tribunal to keep the operation of the Establishment Order no.1/A/CCSC/88/2010 dated 10.09.2010 and 1/A/CCSC/93/2010 dated 30.09.2010 in abeyance, the Respondents – Contemnors have not taken any action to restore the seniority of the petitioners as it stood prior to these establishment orders. On the contrary, they have issued letters to Principal Chief Commissioners/Chief Commissioners throughout the country to conduct review DPC for promotion of SC/ST officers Group-A by keeping necessary documents like APAR dossiers grading, vigilance clearance, penalty statement in readiness. The zonal authorities have sought clarification from the headquarters on the representation submitted by the petitioners but no direction is forthcoming. In total disregard of the directions of this Tribunal, the respondents have stated in the circular issued to the Principal Chief Commissioner/Chief Commissioners that the competent authority had decided to create a special task force to expedite the DPC that SC/ST officers could be promoted to Group-A at the earliest. According to the

learned counsel, once the Establishment orders dated 10.09.2010 and 30.09.2010 have been kept in abeyance, the SC/ST officers cannot be promoted by overlooking the seniority of the petitioners. It was further submitted that in the counter reply the Respondent – Contemnor has quoted DOP&T advice to the effect that SLP (C) no.6915/2014 (**Union of India & ors. Vs. Laxmi Narayan Gupta & ors.**) against the judgment of Hon'ble High Court of Punjab and Haryana dated 15.07.2010 quashing the OM dated 10.08.2010 was still before the Hon'ble Supreme Court and the matter is sub judice. It has been further stated by DOPT that issues emanating from the Hon'ble Supreme Court judgment in M.Nagraj's case was still under examination. Such stand according to the learned counsel was contemptuous of the order of this Tribunal in OA No.371/2011.

3. Learned counsel for the Respondents – Contemnors submitted that the instant contempt petition was barred by limitation as the order against which contempt has been alleged was passed on 07.03.2013 while contempt petition has been filed on 01.10.2015. The department had consulted the DOP&T and they have been advised to await the outcome of the SLP (C) no.6915/2014 as also that the Government was yet to take a view regarding issues arising out of M.Nagraj's case. With regard to the order of this Tribunal to keep the orders dated 10.09.2010 and 30.09.2010 in abeyance, the learned counsel submitted that

the department shall maintain status quo on the issue. He further submitted that according to their understanding “keeping an order in abeyance” meant that status quo had to be maintained and, therefore, the Respondents – Contemnors have not taken any further action after the order of this Tribunal. Learned counsel made a categorical statement that the department had not taken any steps that could even remotely be termed as disobedience of the order of this Tribunal. Learned counsel for Respondents – Contemnors referred to the judgment of Suresh Chand Gautam and submitted that the Courts could not give any direction to the authorities to collect data with a view to decide about the reservation. Counsel for respondents has relied on the following cases:

- (i) **Suresh Chand Gautam vs. State of Uttar Pradesh &Ors.**, WP (C) No.690/2015 of Hon’ble Supreme Court
- (ii) **Abdul Mueed & ors. Vs. Hammad Ahmed**, Cont. Case (Crl.) No.0009/2009 decided on 08.12.2010 of Hon’ble High Court of Delhi.
- (iii) **R.Vinod Kumar vs. Gagan Deep Singh Bedi, I.A.S., Secretary to Government, Revenue Department Secretariat, Chennai**, Contempt Petition No.2994/2014 decided on 21.11.2014 of Hon’ble High Court of Madras.
- (iv) **Vinhuti Sharma vs. Management of Green Field Public School & Ors.**, Cont. Cas. (C) No.845/2014 decided on 04.12.2014 of Hon’ble High Court of Delhi.
- (v) **PranVir Singh Chauhan vs. Shri Dhruv Vijay Singh**, CCP No.35/2011 in OA No.17/1999 of Central Administrative Tribunal, Lucknow Bench.

4. Rejoining, the learned counsel for the petitioner submitted that the present contempt petition was within limitation as the limitation has to be counted from the date of the action purported to be contemptuous of the order of the Tribunal apart from the omission on the part of the respondents to issue an order restoring the seniority of the petitioners. The letter dated 24.09.2015 to Principal Chief Commissioner/Chief Commissioners clearly indicated the motive of the respondents of promoting SC/ST officers without making any changes in the seniority list which was kept in abeyance by this Tribunal. Thus, the period of limitation will have to be counted from the date of this letter.

6. We have heard the learned counsels and perused the record.

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, and 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. With regard to the reference to Suresh Chand Gautam (*supra*) by the learned counsel for the Contemnor, we are of the view that in the order dated 07.03.2013 of this Tribunal, the direction to the respondents is to complete their own decision communicated vide letter dated 15.02.2012, and therefore, there is no conflict with the aforesaid judgment of the Hon'ble Supreme Court.

9. This Tribunal had ordered that the operation of Establishment orders dated 10.09.2010 and 30.09.2010 would be held in abeyance till the exercise of examination undertaken in terms of the letter dated 15.02.2012 of the respondents keeping view the law declared by Hon'ble Supreme Court in *M.Nagraj* (*supra*), **U.P. Power Corporation Ltd. Vs. Rajesh Kumar & Ors.**, Civil Appeal No.2608/2011, the provision of Article 335 of the Constitution as well as the contentions put forth on behalf of the

respondents, was completed. The Respondents – Contemnors have interpreted the order in abeyance to mean that status quo was to be maintained. Both in the counter reply and during the argument the learned counsel for the Respondents – Contemnors has stated that the department has not taken any action in violation of the directions of this Tribunal. The counter reply does not elaborate on the respondents' interpretation of the words "would be held in abeyance" i.e. if it was taken to mean status quo, whether the status quo is being maintained as the situation existed prior to the Establishment orders dated 10.09.2010 and 30.09.2010, or it referred to the situation existing after these orders. Though the learned counsel for the applicants argued that the respondents are maintaining status quo post the aforementioned establishment orders, there is no document on the record to show that the Respondents – Contemnors are continuing to operate on the basis of the notified seniority list. The only document produced by the applicants is the letter dated 01/02.09.2015 addressed to the Principal Commissioner/ Commissioner wherein the anxiety of the concerned Committee of the Parliament has been conveyed to the zonal offices and they have been directed to keep all the relevant papers ready for considering the promotion of SC/ST officers to Group-A. This letter itself cannot be interpreted to mean that the Respondents – Contemnors are going to promote SC/ST officers on the basis of

the seniority list which has been kept in abeyance. It could also be part of the advanced action on the part of the department to ensure that the promotion of SC/ST officers do not get delayed for want of their APAR dossiers, service records etc. in deference of the observations of the Hon'ble Committee of Parliament. In our view, once the order dated 10.09.2010 and 30.09.2010 have been kept in abeyance by this Tribunal the seniority of the petitioners is automatically restored and unless there is a specific order by the Respondents – Contemnors or letter that shows that the department has gone ahead with promotion of the officers on the basis of aforementioned seniority list it cannot be said that there is a violation of the order of this Tribunal dated 07.03.2013. With regard to the submission of the learned counsel for Respondents – Contemnors that they interpreted the word 'abeyance' to mean status quo, we can only say that in the present context the abeyance of orders dated 10.09.2010 and 30.09.2010 would only mean that status quo ante has to be maintained. In the face of the statement that the respondents have not taken any step in violation of the order of this Tribunal we are sanguine that respondents are maintaining status quo ante.

10. In view of the foregoing discussion and aforementioned reasons, we do not find any act of the respondent that could be classified as wilful disobedience of the order of this Tribunal. The

present contempt petition is devoid of merit and the same is dismissed accordingly.

( Dr. Brahm Avtar Agrawal )  
Member (J)

( V.N. Gaur )  
Member (A)

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