

**Central Administrative Tribunal  
Principal Bench, New Delhi**

**CP No.656/2015  
In  
OA No. 2848/2014**

Order Reserved on: 20.01.2016  
Order pronounced on: 02.03.2016

**Hon'ble Mr. V. Ajay Kumar Member (J)  
Hon'ble Dr. B.K. Sinha, Member (A)**

Ashes Kiran Prasad,  
Aged 57 years,  
S/o Late Dhanushdhar Prasad  
R/o Shyam Niketan, Lohanipur East,  
Patna  
Presently posted as  
Chief Commercial Manager/FM,  
North-Western Railway,  
Jaipur and Residing in  
Room No.1, Loco Railway Officers'  
Rest House, Ganapati Nagar,  
Hasanpura Road,  
Jaipur-302006 -Petitioner/Applicant

(By Advocate: Ms. Ayushi Kiran)

VERSUS

Shri Kundan Sinha,  
Member Traffic,  
Railway Board,  
Rail Bhawan,  
New Delhi-110001 -Contemnor/Respondent

(By Advocate: Ms. Geetanjali Mohan)

**O R D E R**

**Dr. B.K. Sinha, Member (A):**

The instant Contempt Petition has been filed by the petitioner under Section 17 of the Administrative Tribunals Act, 1985 read with Section 12 of the Contempt of Courts

Act, 1971 for violation of the order of this Tribunal dated 07.04.2015 passed in OA No. 2848/2014.

2. The petitioner has alleged that the Tribunal, vide the afore order dated 07.04.2015, had set aside the grading given in the APAR of the applicant for the year 2011-12, as there was a contradiction between the general assessment and the individual columns of the APAR form. Therefore, the Tribunal had directed re-assessment in tune with the individual columns.

3. It is the contention of the petitioner that he was placed in the secret list on account of earlier charges pending against him relating to the period when he had been posted as Traffic Officer in the Construction Department of North-Western Railway, in addition to the Chief Passenger Traffic Manager. There is a non-written verbal understanding in the Department that officers, who are in secret list, should not be graded "excellent". An officer in the secret list could at best aspire to get either "good" or "very good" but never to get grading "outstanding". The applicant is due for his promotion to HAG within a year. His junior batch has already been promoted. His hopes for promotion have been put to a quietus in view of grading "good" in his ACR. The respondents, instead of complying with the order of this Tribunal in its true letter and spirit, have instead followed

un-written rule and have upgraded the ACR of the applicant from “good” to “very good” vide order dated 23.07.2014, which is not at all in sync with the individual columns of the APAR form. The petitioner has also alleged that he had never been warned or cautioned. The targets should have been sent jointly by the officer reported upon and reporting officer which was not complied with and COM was not the competent officer to write APAR of the applicant as the reporting officer. The petitioner has also alleged incompetence and total lack of knowledge on the part of COM. He had been judged merely on his approach to SC/ST while there had been no SC/ST staff under him.

4. The petitioner has, therefore, sought that the impugned order dated 23.07.2014 be set aside and he should be awarded “outstanding” in his ACRs.

5. The respondents have filed status report holding that they have implemented the directions after having considered the entries of the relevant columns of the APAR in the year 2011-12 and the same was upgraded from “good” to “very good”. The petitioner was considered for promotion in HAG for the year 2015-16 in which his upgraded ACR has also been taken into account. The petitioner has also been considered for promotion to HAG on the basis of the upgraded APAR, but even then he did not meet the criteria

prescribed by DOP&T and Railway Board guidelines. As per the guidelines of the Railway Board, it is necessary for person being considered for promotion to HAG i.e. Rs. 7300/- to Rs. 7600/- (HA Grade) that he should have earned minimum three “very good” and two “outstanding” reports.) guidelines in The Selection Committee did not find him suited on consideration of his last five ACRs and he had not been empanelled for promotion to HAG. He had also been considered for grant of NFU w.e.f. 29.07.2015 and as he had not been found suitable for empanelment, he could not be granted NFU

6. The petitioner has filed a rejoinder wherein he has placed reliance upon the finding of the Tribunal that *the reporting officer having rated him ‘fit for promotion’ could not have given him grading of ‘Good’ which is below the benchmark*”. Accordingly, minimum of “outstanding” should have been given in sync with the requirement of promotion to HAG.

7. We have considered the pleadings of rival parties as also the documents adduced and the citations relied upon on either side. We have patiently heard the arguments advanced by the learned counsel for the parties on the basis of which we feel that the following issues are germane to decision in this case:-

- (i) *Whether it lies within the scope of contempt petition that orders passed in OA be revised?*
- (ii) *Whether the alleged contemnors have committed any such act which may constitute a contempt to this court?*

8. In so far as first issue is concerned, we would take some space off to go into what contempt means and signifies. The term ‘contempt’ has been defined as **‘the contempt is a wilful disregard or disobedience of a public authority’** [Bouvier L. Dict.]. The term ‘contempt of court’ means civil contempt or criminal contempt. “Civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court.

9. “Criminal Contempt” means the publication (whether by words, spoken or written or by signs or by visible representation or otherwise) of any matter of the doing of any other act whatsoever which –

- (i) scandalizes or tends to scandalize or lowers or tends to lower the authority of any court; or
- (ii) prejudices, or interfere with, the due course of any judicial proceeding; or
- (iii) interferes or tends to interfere with, or obstruct, the administration of justice in any other manner.

10. Contempt, in the legal acceptance of the term, primarily signifies disrespect to that which is entitled to legal regard.

The Hon'ble Supreme Court in **B. Mishra v. B. Dixit** [AIR 1972 (SC) 2466, 2468] has held as under:-

*“Contempt of court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a wilful disregard or disobedience of the Court’s order; it also signifies such conduct as tends to bring the authority of the court and the administration of the law into disrepute.”*

11. The Hon'ble Supreme Court in **Alarakha Hasan Hamirkha v. Keshavlal Dhaneshwar Dwivedi** [AIR 1956 (Sau) 102, 103] held as under:-

*“The law on the subject of contempt of court is to be found in Halsbury’s laws of England, 2<sup>nd</sup> Edi. Volume 7 [para 8] and it says that contempt by speech or writing may be by scandalizing the court itself or by abusing parties to actions or by prejudicing mankind in favour of or against a party before the cause is heard.”*

12. As defined under Section 2 of the Contempt of Courts Act, 1971, there have been many classifications of contempt of courts, some of which are as follows:-

- (i) A direct contempt is an open insult in the presence of the court to the person of the presiding Judge or defiance in his presence to his powers or authority;
- (ii) A Constructive contempt is an act done not in the presence of the court, but at a distance which tends to be little, to degrade, or to obstruct, interrupt, prevent or embarrass the administration of justice;

- (iii) A Criminal contempt is conduct that is directed against the dignity and authority of the court. Acts punishable as criminal contempts are in the nature of crimes, in that they involve the idea of punishment as a penalty for the commission of unauthorized act;
- (iv) Civil contempt consists in failing to do something ordered to be done by a court in a civil action for the benefit of opposing party therein.

13. The Contempt of Courts also provides exceptions where the acts alleged would not constitute contempt; some of which are listed below:-

- (i) Under Section 3 of the Act a person charged with contempt shall not be held guilty of contempt of court on the ground that he has published (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceeding pending at that time of publication, if at that time he had no reasonable grounds for believing that the proceeding was pending.
- (ii) Under Section 4 of the Act a person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding or any stage thereof.
- (iii) Under Section 5, A person shall not be guilty of contempt of court for publishing any fair comment on the merits of any case which has been heard and finally decided.
- (iv) Under Section 6, A person shall not be guilty of contempts of court in respect of any statement made by him in good faith concerning the presiding officer of any subordinate court to---
  - (a) Any other subordinate court, or
  - (b) The High Court, To which it is subordinate.

- (v) Under Section 7, where the proceedings are being held before any court sitting in chambers or in camera except under certain circumstances relating to secret proceedings or connected with public order or where publication has been prohibited or contrary to the provisions of the enactment. The Hon'ble High Court has powers under Section 10 of the Act to punish the contempt of the subordinate court.
- (vi) Under Section 12 of the Act, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.
- (vii) Under Section 13, satisfaction of the court has been made the primary element in awarding punishment and it has the powers to invoke any defence in public interest, which is bonafide.

14. In para 17 of CP No. 156/2014 in OA No. 276/2012 decided on 20.08.2015, this Court has examined the essential ingredients that constitute an offence, which are under:-

“(i) There must be some direction of the court in the form of judgment, decree, order, writ or other process;

(ii) There must be some act of disobedience of wilful undertaking given in the court;

(iii) Such act must scandalize or tend to scandalize to lower the dignity or authority of the court or interfere with the process of the court or obstructs the administration of justice or in any other manner.”

15. In **Midnapore Peoples' Coop. Bank Ltd. & Ors. vs. Chunilal Nanda & Ors.** (2006) 5 SCC 399, the facts, in brief, were that the Hon'ble High Court was of the opinion that the enquiry proceedings against the respondents had not been completed as per his directives and directed as under:-



"1. Let a Rule be issued against the respondent no.2 Sri S. K. Das, Assistant Registrar, Cooperative Societies, Midnapore I, (charging him ?) with committing contempt of this Court (and ?) for directing him to show cause as to why he should not be punished for committing contempt. The Respondent no. 2 shall remain present personally on all the dates of hearing in this Court. He shall file his affidavit in opposition within two weeks from today.

2. Since the respondent no. 2 has by his conduct, disqualified himself to be the Enquiry Officer, I direct that he shall cease to be the Enquiry Officer. It shall be open to the respondents, however, in the light of the aforesaid two orders of the Court, to appoint any other person as the Enquiry Officer and to proceed with the matter once again in the light of the aforesaid directions.

3. The petitioner shall immediately and forthwith be reinstated in the service of the respondent Bank and shall be deemed to be in their service all through. He shall not be prevented in any manner from discharging his duties and shall be paid all arrears of salary within four weeks from today.

Let the contempt application appear two weeks hence. The suspension order shall be immediately deemed to have been revoked."

The afore order of the Hon'ble High Court was challenged by the appellants before the Hon'ble Supreme Court. While deciding one of the issues as to whether such directives could be issued during the contempt proceedings, the Hon'ble Supreme Court held that there was no such justification for passing such orders. For the sake of greater clarity, we extract from the orders of the Hon'ble Supreme Court as under:-

"21. There was also no justification for the further direction by the learned Single Judge in the contempt proceedings, that too by an interlocutory order, that the

complainant should immediately and forthwith be reinstated into the service of the Bank, and shall be deemed to be in the service of the Bank all through, that the employee shall not be prevented in any manner from discharging his duties and that he shall be paid all arrears of salary within four weeks, and that the suspension order shall be deemed to have been revoked. These were totally outside the scope of the proceedings for contempt and amounted to adjudication of rights and liabilities not in issue in the contempt proceedings. At all events, on the facts and circumstances, there was no disobedience, breach or neglect on the part of the Bank and its President and Secretary, to provoke the court to issue such directions, even assuming that such directions could be issued in the course of the contempt proceedings. Hence, directions (2) and (3) and the direction relating to revocation of suspension are liable to be set aside.”

16. In yet another case in **Kanwar Singh Saini vs. High Court of Delhi**, (2012) 4 SCC 307, the Hon’ble Supreme Court had held that purposes of initiation of contempt proceedings are two-fold: to ensure the compliance of the order passed by the court; and to punish the contemnor as he has the audacity to challenge the majesty of law. However, the contempt proceedings being quasi judicial in nature, the standard of proof is of the highest order. The Court while relying upon the decided case in **Debabrata Bandopadhyay & Ors. v. The State of West Bengal & Anr.**, AIR 1969 SC 189, observed as under:

"A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves the court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious

conduct not explainable otherwise, arises that the contemnor must be punished..... Punishment under the law of Contempt is called for when the lapse is deliberate and in disregard of one's duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged."

(Emphasis added)

17. In **Satpal Singh & Ors. Vs. IMG Khan & Ors.**, 2013(3) SLJI CAT (Civil Misc. Recall Application No. 3242/2011 in Civil Misc. Contempt Petition No. 164/2007), the Allahabad Bench of this Tribunal held that the court after having passed the final orders on merit in the original application, could not review the order in a contempt proceeding. The court held that recall or review or appeal are statutory remedies and unless these are specifically provided under any act or rules, no such recall application can be maintainable in contempt matters, particularly when orders are passed on merit.

18. In view of the above consideration, it clearly emerges that contempt proceedings are initiated in wilful disobedience of the orders. However, it is not open for the tribunal/court to issue fresh directions in contempt proceedings. Once the order has been passed in OA, the court becomes functus officio. Its authorization can only be restored within the scope of review jurisdiction but certainly not in a contempt proceeding. As we have

examined above, the jurisdiction of the court is a limited one to see whether its orders have been wilfully disobeyed.

19. This brings us to the second issue whether there is any wilful disobedience of the orders of this Tribunal. The operative portion of the order of this Tribunal needs to be reproduced for this purpose:-

19. In view of the discussion above, we find that the courts have been prohibited from re-appraising the APARs as they do not have any opportunity of supervising the working of the officer reported upon. This is an administrative function, which is best left to the administrative authorities. We have further found that the APAR for the year 2011-12 under consideration has not been reported by incompetent authority nor it suffers from any major procedural lapse. We have also held that even if a person has fulfilled all his targets, the same would not entitle him to get 'Outstanding' grading, as much more is to be seen than mere fulfillment of targets. However, we have seen clear contradiction in recording of APAR by assessing the applicant 'fit for promotion', and at the same time, grading him 'Good', which gives rise to internal contradiction. Therefore, it would be difficult to endorse the APAR recorded by the respondents, which appears to be contradictory, as at one place, the applicant is found fit for promotion, but the grading has been given below the benchmark, making him disqualified for promotion. The reporting officer having rated him 'fit for promotion' could not have given him grading of 'Good' which is below benchmark.

20. Looking to the entire gamut of the matter, we dispose of this Application. The grading given as 'Good' to the applicant in the APAR for the year 2011-12 is set aside as the same does not match with the general assessment made in the relevant columns. The respondents shall consider to give him grading accordingly, which is in consonance or in tune with the relevant columns of the APAR, within 15 days, and thereafter consider his claim, if any, for promotion on the basis of the upgraded APAR."

Thus, what the court found was that the general gradings given in APAR were in contradiction to the individual columns and, therefore, a directive had been issued to give the applicant a grading in consonance with the relevant columns of the APAR. The directive had never been given to give him an 'outstanding' grading, as that would have put the Tribunal in the position of a higher appellate authority in writing APAR. The respondents, in their compliance report, have considered and upgraded the APAR to "very good". It is to be noted that the respondents, in pursuance of the order of the Tribunal, has passed the following order vide letter dated 12.05.2015:-

“In pursuance of orders dated 07.04.15 passed by CAT/New Delhi in OA No. 2848/2014, the Competent Authority has considered the entries of the relevant columns of the APAR for the year 2011-12 of Shri AK Prasad, CCM/FM, NWR and decided that the grading be upgraded from Good to Very Good.”

Here, we fail to find any merit in the argument of the applicant that there is unwritten rule that persons put on secret list are not being given 'outstanding' ACR. This has been strongly denied by the learned counsel for the respondents. Moreover, this matter had been pleaded in the OA, in consideration of which the order of the Tribunal dated 07.04.2015 was passed.

20. Insofar as promotion is concerned, direction of this Tribunal had been to consider the claim for promotion on

the basis of the upgraded APAR but never to promote him. The respondents have produced a copy of the OM dated 03.06.2007, in para 12 of which, it is stated that the benchmark for promotion from Senior Scale to JAG/SG is 'very good' and from SAG to HAG is "very good +". It is stated in para 4 of the status report that the officers in order to earn promotion in HAG must earn three 'very good' and two 'outstanding' reports for empanelment. In para 5 of the status report, it is stated that as per the direction of the Tribunal, the applicant was only required to be considered for promotion after taking into consideration the revised entry in his ACR for the year 2011-12 which had been revised to 'very good' from 'good' and not for promotion itself. His consideration has been done in compliance of the direction of this Tribunal, but he has not been found fit for promotion. The consideration, it is obvious, has been made on the basis of the ACRs of five years, whereas it is only in respect of ACR of 2011-12 that the court has intervened and the grading of the applicant has been upgraded to 'very good'.

21. In view of the above, we find no disobedience whatsoever to the orders of this Tribunal. In conclusion, we say that this Tribunal is not an appellate authority in recording ACRs. The order of the Tribunal only provided for fresh consideration of the ACRs and reconciling the

contradiction and for a review DPC to consider the claim of the applicant for promotion on the basis of the upgraded ACR. Accordingly, the ACR for the year 2011-12 has been upgraded. On the other hand, the review DPC found him unfit even after taken the upgraded ACR into consideration. Hence, we find no merit in the Contempt Petition and the same is closed. Notices issued to the respondents stand discharged.

**(Dr. B.K. Sinha)**  
**Member (A)**

**(V. Ajay Kumar)**  
**Member (J)**

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