Central Administrative Tribunal
Principal Bench, New Delhi

C.P.No.785/2015 in O.A.No.1395/2015

Reserved on 3rd February 2016

Pronounced on 16th February 2016

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

B.V. Somayajulu
s/o late Mr. B.V.S. Narayan
r/o F-163/A (UG3), National Aptts.
Dilshad Garden, Delhi-95

..Applicant

(Mr. Ajesh Luthra, Advocate)

Versus

1. Mr. Kewal Kumar Sharma
   Chief Secretary
   GNCT of Delhi
   5th Floor, Players Building
   Delhi Secretariat, IP Estate, New Delhi

2. Mr. S.N. Sahai
   Principal Secretary (Finance)
   Govt. of NCT of Delhi
   A Wing, 4th Level, Delhi Secretariat
   New Delhi-2

3. Prof. (Dr.) Sanjay Tyagi
   Director
   GB Pant Hospital, GNCTD
   Jawaharlal Nehru Marg
   Delhi Gate, New Delhi-2

4. Mr. Najeev Jung
   Lt. Governor
   GNCT of Delhi
   Rajpur Road, Raj Niwas Marg
   Delhi-54

..Respondents

(Ms. Neetu Mishra, Advocate for Mrs. Rashmi Chopra, Advocate)

O R D E R

Mr. A.K. Bhardwaj:

O.A. No.1395/2015 was disposed of by this Tribunal in terms of Order dated 12.08.2015. The operative portion of the Order reads thus:-

> "The law declared by Hon'ble Supreme Court in Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr (ibid) is not that the absence of charge sheet should be a ground to quash such order of suspension, which are more than three years old. The law declared is that in the absence of issuance of charge sheet in three months, the order of suspension should not be extended beyond such period and the Government should exercise option to transfer the concerned person to any department in any offices or outside the State or to prohibit him from contacting any person or handling records and documents till he prepare his defence. In any case, having due regard to the aforementioned judgment of Hon'ble Supreme Court, the Government of India has already issued Office Memo dated 3.07.2015. We find that the applicant had made representations dated 24.12.2014 and 02.03.2015 to respondents requesting for revoking the order of his suspension. In the wake of the said OM, as well as having due regard to the provisions of Section 20 of Administrative Tribunals Act, 1985, we dispose of the OA with direction to respondents to decide the said representations of the applicant with due regard to the OM dated 03.07.2015 and the judgment of Hon'ble Supreme Court in the case of A.K.Choudhary Vs. Union of India through its Secretary and Ors within eight weeks from the date of receipt of a copy of this order. No costs."

2. When after aforementioned Order respondents further extended the suspension of the applicant, he filed the present Contempt Petition. Having received the contempt notice, the respondents passed the order No.F.342/ C-147/2014/ HF&W/1644-49 dated 02.02.2016 disposing of the representation of the applicant. Learned counsel for applicant contended that the order passed by the respondents in the representation of the applicant is not with due regard to the O.M. dated 03.07.2015 or the judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary** v. **Union of India through its Secretary & another**, JT 2015 (2) SC 487.

3. It is settled position of law that when it is left to the respondents to take decision in the matter, incorrect or wrong decision taken by the respondents would not constitute the contempt and the same is needed to be challenged in the original proceedings.

7. In **Bihar State Govt. Sec. School Teachers Association** v. **Ashok Kumar Sinha & others**, (Contempt Petition (C) Nos.88-89 of 2013 in Civil Appeal Nos.8226-8227 of 2012) decided on 7.5.2014, Hon'ble Supreme Court ruled thus:

> "15. Mr. Rao referred to the following judgments:
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> J.S. Parihar v. Ganpat Duggar and others, [1996 (6) SCC 291]
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> > "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, the 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, a fresh 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."

Indian Airports Employees Union v. Ranjan Chatterjee and Another, [(1999) 2 SCC 537]

"7. It is well settled that disobedience of orders of the court, in order to amount to 'civil contempt' under Section 2(b) of the Contempt of Courts Act, 1971 must be 'willful' and proof of mere disobedience is not sufficient (S.S. Roy v. State of Orissa). Where there is no deliberate flouting of the orders of the court but a mere misinterpretation of the executive instructions, it would not be a case of civil contempt (Ashok Kumar Singh v. State of Bihar).

8. In this contempt case, we do not propose to decide whether these six sweepers do fall within the scope of the notification dated 9-12-1976 or the judgment of this Court dated 11-4-1997. That is a question to be decided in appropriate proceedings.

9. It is true that these six sweepers' names are shown in the annexure to WP No. 2362 of 1990 in the High Court. But the question is whether there is wilful disobedience of the orders of this Court. In the counter-affidavit of the respondents, it is stated that there is no specific direction in the judgment of this Court for absorption of these sweepers, if any, working in the car-park area, and that the directions given in the judgment were in relation to the sweepers working at the International Airport, National Airport Cargo Complex and Import Warehouse. It is stated that the cleaners employed by the licensee in charge of maintenance of the car-park area do not, on a proper interpretation of the order, come within the sweep of these directions. It is contended that even assuming that they were included in the category of sweepers working at the International Airport, inasmuch as they were not employed for the purpose of cleaning, dusting and watching the buildings, as mentioned in the notification abolishing contract labour, they were not covered by the judgment. It is also contended that the case of such sweepers at the car-park area was not even referred to the Advisory Board under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 and it was highly doubtful if they were covered by the notification.

10. On the other hand, learned Senior Counsel for the petitioners contended that going by the map of the Airport, it was clear that these sweepers at the car-park area were clearly covered by the notification and the judgment. The fact that the

names of these six employees were shown in the annexures to the writ petition was proof that they were covered by the judgment. The licensee is in the position of a contractor.

11. In our view, these rival contentions involve an interpretation of the order of this Court, the notification and other relevant documents. We are not deciding in this contempt case whether the interpretation put forward by the respondents or the petitioners is correct. That question has to be decided in appropriate proceedings. For the purpose of this contempt case, it is sufficient to say that the non-absorption of these six sweepers was bona fide and was based on an interpretation of the above orders and the notification etc. and cannot be said to amount to 'wilful disobedience' of the orders of this Court."

All India Anna Dravida Munnetra Kazhagam v. L.K. Tripathi and others, [(2009) 5 SCC 417]

"78. We may now notice some judgments in which the courts have considered the question relating to burden of proof in contempt cases. In Bramblevale Ltd., Re Lord Denning observed: (All ER pp. 1063 H-1064 B)

> "A contempt of court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that, when the man was asked about it, he told lies. There must be some further evidence to incriminate him. Once some evidence is given, then his lies can be thrown into the scale against him. But there must be some other evidence.
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> Where there are two equally consistent possibilities open to the court, it is not right to hold that the offence is proved beyond reasonable doubt."

79. In Mrityunjoy Das v. Sayed Hasibur Rahaman the Court referred to a number of judicial precedents including the observations made by Lord Denning in Bramblevale Ltd., Re and held: (SCC p. 746, para 14)

> "The common English phrase 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond reasonable doubt."

> 80. In Chhotu Ram v. Urvashi Gulati a two-Judge Bench observed: (SCC p. 532, para 2)
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> > "2. As regards the burden and standard of proof, the common legal phraseology 'he who asserts must prove' has its due application in the matter of proof of the allegations said to be constituting the act of contempt. As regards the 'standard of proof', be it noted that a proceeding under the extraordinary jurisdiction of the court in terms of the provisions of the Contempt of Courts Act is quasi-criminal, and as such, the standard of proof required is that of a criminal proceeding and the breach shall have to be established beyond all reasonable doubt."
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> 81. In Anil Ratan Sarkar v. Hirak Ghosh the Court referred to Chhotu Ram v. Urvashi Gulati and observed: (SCC p. 29, para 13) "The Contempt of Courts Act, 1971 has been introduced in the statute book for the purposes of securing a feeling of confidence of the people in general and for due and proper administration of justice in the country" undoubtedly a powerful weapon in the hands of the law courts but that by itself operates as a string of caution and unless thus otherwise satisfied beyond doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the statute."
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19. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these Contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance of the directions given in the judgment, this Court is not supposed to go into the nitty gritty of the various measures taken by the Respondents. It is also correct that only if there is willful and contumacious disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. We can certainly go into the issue as to whether the Government took certain steps in order to implement the directions of this Court and thereafter withdrew those measures and whether it amounts to non-implementation. Limited inquiry from the aforesaid perspective, into the provisions of 2014 Rules can also be undertaken to find out as to whether those provisions amount to nullifying the effect of the very merger of BSES with BES. As all these aspects have a direct co-relation with the issue as to whether the directions are

implemented or not. We are, thus, of the opinion that this Court can indulge in this limited scrutiny as to whether provisions made in 2014 Rules frustrate the effect of the judgment and attempt is to achieve those results which were the arguments raised by the respondents at the time of hearing of C.A. No. 8226-8227 of 2012 but rejected by this Court. To put it otherwise, we can certainly examine as to whether 2014 Rules are made to implement the judgment or these Rules in effect nullify the result of merger of the two cadres."

4. In view of the aforementioned, we do not find any willful disobedience in the order dated 02.02.2016 passed by the respondents. Contempt Petition is found devoid of merit and the same is accordingly dismissed. Notices issued to the respondents are discharged. It goes without saying that the applicant would be at liberty to challenge the order dated 02.02.2016 passed by the respondents rejecting his representation, in appropriate proceedings. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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