

CP.No.170/00057/2017(OA.No.230/2016)/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

**CONTEMPT PETITION NO.170/00057/2017 IN ORIGINAL APPLICATION NO.
170/00230/2016**

DATED THIS THE 21st DAY OF MARCH, 2018

HON'BLE DR.K.B. SURESH, MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Major (Retd) Siddalingayya Hiremath, KAS
Aged about 39 years
S/o.Shivayya Hiremath
Deputy General Manager
Rehabilitation and Resettlement
Upper Krishna Project, Navanagar
Bagalkot-587 103
Now working as
Commissioner
Hubballi Dharwad Municipal Corporation
Lamington Road
R/o.Hubballi, Dist:Dharwad. Applicant

(By Advocate Shri Gachchinamath)

Vs.

1. Shri Anil Kumar T.K.
The Principal Secretary
Department of Personnel & Administration Reforms (DPAR)
Vidhana Soudha
Bengaluru-560 001.
2. Dr.Subhash Chandra Khuntia
The Chief Secretary
Government of Karnataka
Vidhana Soudha
Bengaluru-560 001.
3. Shri Bhanu Pratap Sharma
Secretary to Government of India
Ministry of Personnel, Public Grievance and Pensions
(Department of Personnel and Training)
North Block, New Delhi-110 001.
4. Shri T.Jacob
Secretary
The Union Public Service Commission
Dholpur House
Shahjahan Road
New Delhi-110 069.

5. Sri Ajay Mittal
Secretary to Govt. of India
Ministry of Personnel, Public Grievances & Pensions
(Dept. of Personnel Training)
North Block, New Delhi-110001. ...Respondents

(By Advocates Shri T.S.Mahantesh for R1 & 2, Shri Madhusudhan for R4 & Shri S.Prakash Shetty for R3 & 5)

ORDER

(PER HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A))

This Contempt Petition has been filed by the petitioner alleging non-compliance of the order dtd.01.02.2017 passed by this Tribunal in OA.No.230/2016. The Tribunal vide para-15 of its order dtd.01.02.2017 directed as follows:

“15. We hold that the applicant is entitled to the benefit offered by the fourth Proviso to Regulation 5(2). The respondents are directed to consider the applicant’s representations and decide any pending issues including the question of the applicant’s position in the seniority list of KAS officers and his claim to be considered for appointment to the IAS within three months of receiving a copy of our order. We make it clear that these issues will be decided in accordance with the IAS (Appointment by Promotion) Regulation, 1955, and other relevant rules, and based on the merits of the case.”

2. According to the petitioner, the respondent No.3 had filed Writ Petition No.11337/2017(S-CAT) before the Hon’ble High Court of Karnataka and vide order dtd.23.03.2017, the said Writ Petition was dismissed by the Hon’ble High Court. He also submits that even though the applicant has communicated the order of the Tribunal and also submitted representation on 6.2.2017, the respondents have not taken any action in the matter which clearly amounts to contempt.

3. A compliance report on behalf of the State Government i.e. Respondent No.1 & 2 was filed in which it is submitted that following the order of the Tribunal, the name of the applicant was included in the zone of consideration in terms of the 4th proviso to Regulation 5(2) of the IAS (Appointment by Promotion)

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Regulations, 1955 and his name was included in the proposal sent to the UPSC for consideration for appointment to the IAS. They have enclosed a copy of the communication sent to the Secretary, UPSC dtd.26.05.2017, 02.06.2017 & 12.09.2017 to that effect and they also informed that the petitioner was communicated about the compliance of the order vide communication dtd.23.10.2017.

4. A reply was also submitted on behalf of the respondents No.3 & 5 in which the Government of India have informed that the issue of inter se seniority has to be decided by the State Government in accordance with the Service Rules applicable to such officers and they have contended that the Govt. of India has no further action to take in the matter.
5. The petitioner has submitted a rejoinder to the compliance report submitted by the State Government i.e. respondent No.1 & 2 saying that the respondents have submitted a proposal to the UPSC for consideration of 56 officers of Karnataka Administrative Service for promotion to IAS in accordance with IAS (Appointment by Promotion) Regulations, 1955. However, they have not taken into account 7 years and 6 months of service rendered in Short Service Commission. There is no justification to place the applicant at Sl.No.56. He has also submitted that in case of Capt. Dr.K.Rajendra, a notification was earlier made on 02.03.2016 according him consequential seniority which has not been done in his case. He further alleges that the respondents in order to achieve indirectly what they could not achieve directly resorted not only to misrepresent facts but also to mischief by withdrawing the notification dtd.02.03.2016 and the sole intention is to deny the applicant the benefit offered lawfully and as decreed by this Hon'ble Tribunal.
6. We have heard the Learned Counsels for all the parties and the submissions

made by them which were primarily on the above lines.

7. We have carefully examined as to whether there has been any willful violation of the order passed by the Tribunal dtd.01.02.2017 in OA.No.230/2016. The Tribunal had clearly held that the applicant is entitled to the benefit offered by the fourth proviso to Regulation 5(2). The fourth proviso to Regulation 5(2) of the IAS (Appointment by Promotion) Regulations, 1955 says as follows:

“Provided also that in respect of any released Emergency Commissioner or Short Service Commissioned Officers appointed to the State Civil Service, eight years of continuous service as required under the preceding proviso shall be counted from the deemed date of their appointment to that service, subject to the condition that such officers shall be eligible for consideration if they have completed not less than four years of actual continuous service, on the first day of the January of the year for which the select list is prepared, in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government.”

8. The petitioner Shri Maj.Siddalingayya Hiremath had completed only 4 years of State Civil Service. However, by taking into account the service rendered by him as Short Service Commissioned officer, his name was included by the State Govt. in the list of officers for promotion to IAS in the zone of consideration in terms of the 4th proviso to Regulation 5(2) of the IAS (Appointment by Promotion) Regulations, 1955. Therefore, the order of the Tribunal on this aspect has been complied with. As regards the issue of seniority is concerned, the State Government in a communication to UPSC clearly mentioned that it has been done as per the seniority fixed in the inter-se seniority list published by the State Government as per rules and has also referred to Rule 6A of KGS Seniority Rules 1957. In fact it is seen from the documents submitted by the petitioner himself in the rejoinder that initially the State Government had issued a notification on 02.03.2016 in the case of Captain Dr.K.Rajendra assigning him notional seniority in the final gradation list. However, subsequently vide order dtd.25.5.2017 the said notification was withdrawn. Therefore, it cannot be said that a different stand has been

CP.No.170/00057/2017(OA.No.230/2016)/CAT/Bangalore Bench adopted by the State Government in case of Captain Dr.K.Rajendra and the petitioner Shri Maj.Siddalingaiah Hiremath. The contention of the applicant that the notification of 2.3.2016 was withdrawn only to deny the benefit to him is bereft of any logic and cannot be accepted. It also appears that the State Government vide communication dtd.23.10.2017 had apprised the petitioner of the position.

9. Therefore, on detailed consideration of the entire matter, we are of the view that there has been no case of any willful violation of the order passed by the Tribunal by the State Government. In case the applicant has any grievance with regard to his seniority in the seniority list of KAS officers which according to the State Govt. has been done in terms of Rule 6A of KGS Seniority Rules 1957, he may agitate the matter in the appropriate forum. As regards the respondents No.3 & 5 are concerned, there have also been no violation of the order passed by this Tribunal by them.

10. Accordingly, we hold that the order of the Tribunal dtd.01.02.2017 in OA.No.230/2016 has been complied with and hence the Contempt Petition stands closed. Notices issued are discharged. No order as to costs.

(P.K. PRADHAN)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the petitioner in CP.No.170/00057/2017(OA.230/2016)

- Annexure-A1: True copy of the order made in application No.17/00230/2016
- Annexure-A2: True copy of representation
- Annexure-A3: True copy of acknowledgement
- Annexure-A4: True copy of representation
- Annexure-A5: True copy of acknowledgement
- Annexure-A6: True copy of representation
- Annexure-A7: True copy of acknowledgement

Annexure-A8: True copy of representation

Annexure-A9: True copy of representation

Annexure-A10: True copy of the order made in W.P.No.11337/2017

Annexure-A11: True copy of regulations

Annexures with reply statement:

Annexure-R1: Copy of the letter dated 26.05.2017

Annexure-R2: Copy of the letter dated 02.06.2017

Annexure-R3: Copy of the letter dated 12.09.2017

Annexure-R4: Copy of the letter dated 23.10.2017

Documents with rejoinder:

Document No.1: True copy of Assessment Report

Document No.2: True copy of notification dated 02.03.2016

Document No.3: True copy of letter dated 18.01.2016

Document No.4: True copy of letter dated 01.02.2016

Document No.5: True copy of correspondence dated 09.06.2016

Document No.6: True copy of notification dated 25.05.2017

Annexures with reply statement filed by R3 & 5:

Annexure-R1: Copy of the letter dated 25.07.2017
