

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/61 of 2017
Cuttack this the 02nd day of January, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(JUDL.)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

....

Nimai Charan Mohanty, aged about 83 years, S/o. late G.B.Mohanty, presently resides at Plot No.761/15, Chintamani Vihar, Panchasakha Vihar, Dumduma, Bhubaneswar, District-Khurda
...Applicant

By the Advocate (s)-M/s. D.P.Dhalasamant
N.M.Rout, S.Dhal

-VERSUS-

Union of India represented through:

1. The General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Kolkata-43.
3. Chairman, Railway Board, Rail Bhawan, New Delhi.
4. General Manager, East Coast Railway, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
5. Divisional Railway Manager, E.Co.Railway, Khurda Road, Khurda.
6. Divisional Railway Manager, Waltair Division, E.Co.Railway, Waltair, Andhra Pradesh

...Respondents

By the Advocate(s)-Mr.T.Rath and Mr.N.K.Singh

....

ORDER

S.K.PATTNAIK, MEMBER (J):

The applicant filed the present O.A. on 31.1.2017 in pursuance of the liberty/direction given by the Hon'ble Supreme Court while disposing of Special Leave to Appeal (CC No.24959/2016) (arising out of final judgment and order dated 14.02.2012 in WPC No.26412/2011 20/09/2016 in RVWPE No.67/2012 passed by the Hon'ble High Court of Orissa at Cuttack). Now the applicant in this O.A. has prayed for the following reliefs:

- i) That appropriate action be taken to see that the order dated 22.11.2007 of the Hon'ble Tribunal passed in O.A.No.987/2005 is properly complied with in letter and spirit as per direction of the Hon'ble Supreme Court of India 2017 passed in Special Leave to Appeal (C.../2017), C.C.No.24959/2016 and SLP (C) CC No.236/2017 on 05.01.2017.*
- ii) That the scale of the applicants should have been fixed in scale of Rs.550-750/- with effect from 01.08.1982/01.08.1983 and thereafter they should have been promoted to the scale of Rs.700-900/- as on 01.08.1982/01.08.1983 as per decision taken on 23.06.1993 by the Railway Administration for implementation of the order dated 14.05.1993 passed in C.P. No.135 and 195 of 1991 by the Hon'ble Apex Court of India with all consequential benefits with 12% interest per annum.*
- iii) And further be pleased to pass any other order/ orders as deemed fit and proper."*

2. Before delving into the merit of the case of the case, it is necessary to quote hereunder the orders of the Hon'ble Supreme Court dated 5.1.2017 in SLP (C) ...CC No.236/2017 in extenso.

"Delay condoned.

Having gone through the pleadings available, we do not find that the petitioners had, at any point of time, raised a specific averment before the Central Administrative Tribunal, Cuttack Bench, Cuttack as to which part of order dated 22nd November, 2007 in Original Application No.987 of 2005 of the Tribunal has not yet been complied with in letter and spirit. We find that in the same order itself, the Tribunal had recorded that the Railway Administration unambiguously intended for implementation of the order.

Therefore, leaving the question of law as to the maintainability of the appeal before the High Court, these special leave petitions are disposed of with liberty to the petitioners to make a specific prayer before the Tribunal as to which part of the order dated 22nd November, 2007 has not been complied with by the Railway Administration, in which case, the Tribunal may look into such original proceedings and take appropriate action to see that the order originally passed by the Tribunal on 22nd November, 2007 is properly complied with in letter and spirit.

We may make it clear that this liberty is not to be availed by way of contempt proceedings but by way of fresh original application.

In view of the numerous litigations over a long period of time, we request the Tribunal to make an endeavor to expeditiously dispose of the application if filed, preferably within six months of the instruction.

Pending application, if any, stands disposed of”.

3. Going through the above order, it is explicit that this Tribunal is required to look into the order dated 22.11.2007 passed in O.A.No.987 2005 and see whether the order as passed has been complied with in letter and spirit. In such backdrop, the operative portion of the order dated 22.11.2007 in O.A.No.987 of 2005 is quoted herein below:

“In view of the above, the O.A. succeeds. The respondents shall work out the percentage of the upgraded posts with reference to the total number of ASM/SM as on date of restructuring of various divisions of south eastern

railways and the benefit of such restructuring should be made available to all those who were eligible at that point of time. However, such upgradations shall be only notional from the date of the individual's becoming eligible for the same till the time he has been so positioned. If any individual posts and actual from the date shall be notional till the date of his superannuation and only enhanced pension on the basis of upgrades pay scale shall be available to such of pay scales shall be available to such an individual. It is ordered accordingly. The applicants having already retired should, therefore, be entitled to fixation of pay at the upgraded scale of pay with effect from 1983 according to the seniority position provided they fall within the ratio of the upgraded post. Their further promotion shall beat par with their juniors and pay in the promotional post shall also be fixed on calculated on the above basis, the same shall be taken as the base of calculating terminal benefits such as, pension, gratuity, leave encashment and commutation. Their entitled under these head shall be worked out and the difference between the amount due and paid shall be worked out and disbursed to the applicants and other similarly placed individual within a period of eight months from the date of communication of this order. If by chance, any of the beneficiaries as above have died, the aforesaid amount shall become payable to that person who is in receipt of family pension. This order is passed keeping in view the power vested with the Tribunal under the provisions of Rule 24 of the CAT(Procedure) Rules, 1986".

4. Allegedly, the aforesaid orders of the Tribunal were not complied with, applicants in the O.A. filed Contempt Petition (Civil) No.54 of 2008. However, during the pendency of the C.P., the respondents passed a speaking order on 3.11.2008(A/4), the relevant part of which is quoted hereunder:

"7. So far the applicants of the present O.A.987/05 are concerned, the applicant Nos. 1 & 26 to 44 belong to KUR Divn.

Amongst them, the applicant nos. 1, 27, 28, 30, 31,32, 33, 34, 35, 39, 41 & 44 have already got promotion in scale:Rs.455-700/- from 01.8.82, in scale:Rs.550-750/- from 01.8.82 & in scale 700-900 from 16.12.87.

The applicant Nos. 29, 36, 37, 38, 40, 42 & 43 have already got promotions in scale Rs.455-700/- on 01.08.82 and in scale Rs.550-750 on 01.08.82.

All the applicants Nos. 1 & 26 to 44 have got the benefit of the Hon'ble the Supreme Court's judgment as well as the benefits enumerated in the cadre restructuring under Estt.Srl.No.160/83 after receipt of the guidelines from CPO/GRC regarding implementation of the Hon'ble Supreme Court's judgments.

The Applicant No.1 being borne in the cadre of SM/ASM in WAT Divn. Had been given benefit due to implementation of the Hon'ble Supreme Court's judgment byway Divn. Accordingly, he has been given promotion in scale:Rs.455-700/- & Rs.550-750/- by WAT Divn. And thereafter in scale:Rs.700-900/- on 16.12.87 had been given by KUR Divn, as he was working in KUR Divn. On the material date.

Thus, KUR Divn, has honoured and complied the Hon'ble Supreme Court's judgment by following the instruction of CPO/GRC from time to time at the material point of time and extended the benefit to the present Applicant Nos. 1 & 26 to 44 at that time. There is no deviation in principle in complying the judgment of the Hon'ble Supreme Court as well as rule position are concerned.

- 8. It is worthwhile to submit here that all the petitioners before Hon'ble Supreme Court, now the applicants of the instant O.A. have got 02 promotions and also according to their seniority, they have got their next promotion, who are entitled, in 1987 as per their seniority.*
- 9. It is to submit that in accordance to Hon'ble Supreme Court's judgment, you have been given the benefit/promotion in Alternative-II and you have been dealt under Alternative-I for future promotions as per the Hon'ble Apex Court's judgment. From the above position, it has become crystal clear that you have no cause in the instant O.A. after the benefit availed by you in promotion in a manner indicated by Hon'ble Supreme Court., Thus, as submitted above, you have already got the benefit in obedience to Hon'ble Supreme Court of India's judgment. Therefore, in accordance with the order dt. 22.11.07 of Hon'ble*

CAT/CTC passed in O.A.No.987/05, no further benefit could be extended as the benefit of promotion has already been extended as per the Hon'ble Supreme Court's judgments.

Thus, in view of the aforesaid facts and disclosure, it is accordingly informed that all the benefits have been duly extended to you as per the orders of Hon'ble Supreme Court of India which also conforms the observations of the Hon'ble CAT/CTC Bench in its order dtd. 22.11.07 in OA No.987/05".

5. Soon after the above order, the DRM(P), Waltair passed a compliance order dated 4.11.2008(A/5) , the operative portion of which reads as under:

"6. As only two consecutive promotions are allowed under the orders of restructuring of cadres and being in the scale Rs.425-640/- you were promoted to first higher scale Rs.455-700 and second higher scale Rs.550-750 from 01.08.82/01.08.83 under this office Order No.WPY/306/Pt/25 dt. 7.7.93 and No.WPY/306/Pt.26 dt.9.7.93 under restructuring cadre. The above promotions are in confirmation to Railway Board's guidelines and also in compliance to Hon'ble Apex Court's order.

7. In view of the above you are not entitled for any further benefit in terms of the Hon'ble CAT/Cuttack's order in OA No.987/05 dt.22.11.2007".

6. The Applicants filed CP (Civil) No. 54 of 2008 and C.P (Criminal) No. 1/2010. In C.P (Civil) No. 54 of 2008, the Respondents have brought to the notice of this Bench that ".....On 3/11/2008, the DRM/ECRly/KUR informed the applicants that they have no cause as they have already availed of the benefit and no further benefit could be extended to them in accordance with the order of this Tribunal dated 22/11/2007. On 4/11/2008, DRM, ECRly,KUR informed the applicant that they are not entitled to any further benefits in terms of the order

dated 22/11/2007 of this Tribunal. On 10/02/2009, additional show cause was filed by the alleged contemnors stating therein that Khurda Division and Waltair Division came to the administrative control of the ECoRly w.e.f. 1/4/2003. The decision of the Hon'ble Apex Court has been extended to the applicants long back and extension of such benefit prior to disposal of the OA could not be brought to the notice of the Tribunal due to non impleading of Divisional Authority or Zonal Authority of ECoRly whereas counter in the OA was filed by the Senior Divisional Personnel Officer, Khurda Road. On 4.12.2009, the Respondents filed their show cause stating therein that after receipt of direction of the Hon'ble Supreme Court, the CPO convened a meeting on 19.7.1990 with all DPOs and implemented the order of the Hon'ble Apex Court as per the meeting dated 19.7.1990." Based on the positive stand taken by the Respondents and the law laid down by the Hon'ble Apex Court, this Bench of the Tribunal vide order dated 29/08/2011, dropped the CP (Civil) No. 54 of 2008 with the following observations:

"10. The question for consideration in this Contempt Petition is whether the Tribunal is justified to proceed with a contempt petition even after being reported that the order has been complied with and if so whether the manner of compliance can be adjudicated in the CP. In this connection it is worthwhile to quote the relevant portion of the order in the case of J.S.Parihar v. Ganpat Duggar and Ors. 1996 Supreme Court Cases (L&S) 1422. It reads as under:

"...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 maybe wrong or maybe right or may or may not be in conformity with the directions. But that would be a fresh cause of action for aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order.re-examining 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..."(Emphasis supplied).

In the case of Suresh Chandra Poddar v. Dhaniram and Others, 2002 Supreme Court Cases (L&S) 214, it has been observed as under:

"This is an instance of how a Tribunal vested with the powers to punish for contempt of Court became oversensitive in using such powers. Time and again this Court has cautioned as to when and in what circumstances contempt of court jurisdiction is to be exercised. Such a power is not intended to be exercised as a matter of Course. Courts should not feel unduly touchy when they are told that the orders have not been implemented forthwith. If the court is told that the direction or the order of the Court has been complied with subsequently, albeit after receipt of notice of contempt, we expect the Courts to show judicial grace and magnanimity in dealing with the action for contempt".

In a similar matter relying on the decision of the Hon'ble Apex Court in the case of J.P.Parihar(supra), this Tribunal dropped the CP No.68 of 2010(Raghunath Singh and Others v. UOI &Ors.).

11. "We do not find any good reason to differ from the view already taken following the decision of the Hon'ble Apex Court in the above Contempt cases in the instant CP. Hence by applying the law laid down by Their Lordships of the Hon'ble Apex Court in the case of Sub Inspector Rooplal and Others vrs. Ltd. Governor through Chief Secretary, Delhi & Others (2000) 1 SCC 644 in which it has been held by the Apex Court that the precedents are to be followed by the Tribunal, we drop this CP and discharge the notice issued to the alleged contemnors. No costs".

7. The Contempt Petition No. 1/2010 filed by the Applicant and others was also dropped by this Bench vide order dated 29.8.2011 with an affirmative finding that there was no deliberate and willful attempt on the part of the official Respondents so as to be proceed against them in Criminal contempt.

8. A full-fledged patient hearing was given to the leaned counsel for both sides as they have taken three sittings to argue and present their cases. Having heard them, perused the records. The sole point discernible is whether orders of this Tribunal dated 22.11.2007 in O.A.No.987 of 2005 have been complied with in letter and spirit and if not, which part of the order has not been complied with by the Railway Administration as alleged by the applicant in the O.A.

9. Prima facie, it is noticed that OA No. 987 of 2005 was filed by 44 (forty four) applicants whereas, the present OA has been filed by the applicant alone claiming non compliance of the order dated 22/11/2007 in OA No. 987 of 2005. On going through the entire case record with the connected O.A., CPs one thing is crystal clear that out of 204 applicants in Contempt Petition No. 130 & 195 of 19991 before the

Hon'ble Apex Court and 25 applicant in OA No. 987 of 200, the present applicant alone claims non-compliance of the order by the official respondents. After the disposal of Civil Appeal No.2054/90 by the Hon'ble Supreme Court vide judgment dated 30.4.1990, a decision was taken by the then Chief Personnel Officer(Admn.), the relevant part of which is quoted hereunder:

"5. From the records, it is seen that every division as per earlier decision have promoted/anti dated the promotion of optees of ASMs/SMs in scale Rs. 455-700/- w.e.f. 1.8.83. Thereafter, some of them might have been further promoted on the basis of combined seniority in ASMs/SMs in scale Rs. 455-700/- to Dy. SS and above as per existing procedure;

6. In view of the present direction, there is no option left with the administration than to treat these 204/206 SMs (Petitioner) for promotion as per alternative II by fixing them in the grade of Dy. SS/SM in scale Rs. 550-750 and above as per prescribed percentage according to their eligibility."

10. This implementation order dated 23.5.1993 was never challenged by the applicant within a reasonable time and the Applicant along with others approached this Tribunal only in the year 2005 in O.A.No.987 of 2005. Now by order dated 4.11.2008, the DRM, East Coast Railways, Waltair has reiterated the stand taken earlier and categorically observed vide order dated 4/11/2008 that the applicant and 24 others who were petitioners in O.A.No.987 of 2005 are not entitled to any further benefit in terms of CAT's Order dated 22.11.2007 in O.A.No.987 of 2005. The relevant portion of the order dated 04/11/2008 reflected in Para 4, 6 & 7 are quoted below:

“4. The 32 posts held by the petitioners of Waltair Division were restructured as per alternative II of the restructuring scheme for SMs category under Rly Bds Lr.No.PC III/80/UPG/19 dt.29/07/83 as follows:

Category	Scale of pay	No. posts held by Petitioners as Per their position As on 31/7/82	Revised strength as on 01/08/1982
ASM	330-560	02	NIL
SM	425-640	30	Nil
SM	455-700	Nil	04
Dy.SM	550-750	Nil	14
SM	700-900	Nil	14

The Petitioners who were in the grade SM/425-640 were promoted to the grade Rs.455-700 (first promotion) and to the grade Rs. 550-750 (second promotion) with effect from 01/08/82/01.08.83 in terms of this office OO No. WPY/306/PT/25 dt.07.07.93. Since there was no eligible staff among the petitioner fulfilling the conditions for promotions to the post of SS/700-900 w.e.f. 1.8.82/1.8.83 which is the higher grades to the petitioners these 14 posts were operated in lower grade i.e. 550-750 and filled up by the petitioners. Further after their placements in the grade Rs. 550-750 from 01/08/82/01.08.83 such of the petitioners who were eligible and qualified in the subsequent selection were promoted to the next higher grade Rs. 2000-3200 from 05.12.88 vide this office O.O.No.WPY/306/PT/25 dt.04.05.1994. The details of the petitioners promotions an eligible and ordered are enclosed as Annexure A.

6..As only two consecutive promotions are allowed under **the orders of restructuring of cadres and being in the scale Rs.425-640/- you were promoted to first higher scale Rs.455-700 and second higher scale Rs.550-750 from 01.08.82/01.08.83 under this office Order No.WPY/306/Pt/25 dt. 7.7.93 and No.WPY/306/Pt.26 dt.9.7.93 under restructuring cadre. The above promotions are in confirmation to Railway Board's guidelines and also in compliance to Hon'ble Apex Court's order.**

7. In view of the above you are not entitled for any further benefit in terms of the Hon'ble CAT/Cuttack's order in OA No.987/05 dt.22.11.2007”.

11. It is the positive case of the Respondents that after the decision of the Hon'ble Apex Court and before the order in OA No. 987

of 2005, the applicant who was in the scale of pay of Rs. 425-640 by virtue of application of Alternative II was granted the benefit SM in scale Rs. 455-700 w.e.f. 01/08/1982 by the Waltair Division; Dy.SS in scale Rs. 550-750/- w.e.f. 01/08/1982 by Waltair Division and thereafter, vide Memo No. Optg/SM-AM/94/46 dated 27/06/1994 the Khurda Road Division had granted the promotion to the applicant to SS in scale Rs. 700-900/-w.e.f.16/12/1987. Thus, the applicant was granted the scheme of restructuring to its fullest extent. This stand taken by the respondent in paragraph 19 of their reply has not been controverted by the applicant in paragraph 30 of his rejoinder filed on 07/11/2017. The Respondents' counter is transparent and leaves no doubt of any ambiguity relating to granting the benefit as claimed by the applicant. We are satisfied that the Department have complied with the orders of this Tribunal in letter and spirit and there was nothing left to be delivered to the applicant.

12. However, in obedience of the direction of the Hon'ble Supreme Court, we rummaged the entire records and found that the applicant has unnecessarily and luxuriously litigating without any semblance or infringement of any right or entitlement. We would have imposed heavy costs on the applicant for wasting valuable time of judicial for not only of this Tribunal, but also of the Hon'ble High Court and Hon'ble Supreme Court time and again in respect of cases which have long since been concluded even during 1993, but by way of judicial restraint we refrain from doing so.

13. The O.A. being devoid of merit is dismissed. We affirmatively hold that the order of this Tribunal dated 22.11.2007 in O.A.No.987 of 2005 has already been complied in letter and spirit.

(DR.M.SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

RK/CM