

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Civil Contempt Petition No.200/00069/2016

(in OA 1148/2011)

Jabalpur, this Wednesday, the 05th day of September, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

M.S. Gill, S/o Shri K. Singh, aged about 60 years, Retired Superintendent (T), Bhilai Division No.1, District Durg – 491001 (C.G.), R/o Qr. No.12/2, Maitri Nagar, Rishali, Bhilai, Durg (C.G.)
-Petitioner

(By Advocate – Shri Amardeep Gupta)

V e r s u s

1. Shri Shaktikant Das, Secretary, Ministry of Finance, Government of India, North Block, New Delhi 110001.
2. Dr. Hasmukh Adhia, Secretary (Revenue), Ministry of Finance, Government of India, North Block, New Delhi 110001.
3. Shri Atul Gupta, Commissioner, Central Excise Raipur, Commissionerate, Tikarapara, Raipur 492001 (C.G.).
4. Shri Sunil Kumar Sawhney, Director General (HRD), Central Board of Excise & Customs, Department of Revenue, 409/8, 'Deep Sikha', Rajendra Palace, New Delhi 110008.

- Respondents/Contemnors

(By Advocate – Shri Himanshu Shrivastava)

O R D E R (Reasoned)

By Ramesh Singh Thakur, JM.

This Contempt Petition has been filed by the petitioner for non compliance and willful disobedience of order dated 24.11.2014

passed by this Tribunal in Original Application No.1148/2014 (Annexure C-1).

2. It has been submitted by the counsel for the petitioner that after the orders passed by this Tribunal, he represented his matter before the competent authority and has forwarded the order through FAX on 14.01.2015 (Annexure C-3). Thereafter, the petitioner sought some information under the Right to Information Act, 2005 to which the respondent/contemnor No.2, vide his letter dated 21.04.2015 (Annexure C-4) has directed the petitioner to approach the Cadre Controlling Authority (CCA), Bhopal. The petitioner again represented his matter before the competent authority, however, the authorities have not given any heed towards his grievance.

3. It has been further submitted by the petitioner that against the orders passed by this Tribunal in OA No.1148/2011, the respondent department had filed Writ Petition No.72/2016 before the Hon'ble High Court of Madhya Pradesh at Jabalpur and the Hon'ble High Court, vide its order dated 12.07.2016 (Annexure C-8), has affirmed the orders passed by this Tribunal. It has also been submitted by the counsel for the petitioner that on 18.07.2016 (Annexure C-9), the petitioner communicated the order of the

Hon'ble High Court to the respondents and has also made the reminders on 27.07.2016 and 10.08.2016. So, the submission of counsel for the petitioner is that despite the directions to respondents Nos.1 & 3, the respondents have not complied with the orders of this Tribunal.

4. The respondents have filed the counter reply/response to the Contempt Petition. It has been submitted that they have the highest regard to the order passed by this Tribunal and they have never intentionally or willfully disobeyed the order or direction of this Tribunal. However, in the event of any act or omission amounting to contempt, the respondents have submitted their unconditional apology.

5. The respondents have further submitted that the order dated 24.11.2014 of this Tribunal, was forwarded to the CCO, Bhopal on 01.12.2014 for taking necessary action. The Ministry of Finance informed its decision vide letter dated 22.12.2015 that the matter has been examined in the Board in consultation with DoP&T and Department of Legal Affairs, Ministry of Law. The Ministry of Law advised to agitate the matter before the appropriate High Court. Accordingly, the respondent department had filed a Writ Petition No.72/2016 before the Hon'ble High Court of Madhya

Pradesh at Jabalpur on 01.01.2016 against the orders of this Tribunal dated 24.11.2014. The Hon'ble High Court, vide its order dated 13.01.2016 (Annexure R-1), had stayed the operation of the order dated 24.11.2014 of this Tribunal. The above W.P was finally decided on 12.07.2016 by the Hon'ble High Court and the High Court did not find any infirmity in the order dated 24.11.2014 passed by this Tribunal.

6. It has been further submitted by the respondents that the order dated 12.07.2016 in the above W.P, was communicated to the CCO, Bhopal on 29.07.2016. It has been stated by the respondents that in the meantime, the petitioner has filed the present Contempt Petition for non-compliance of order dated 24.11.2014 passed by this Tribunal.

7. The respondents have specifically submitted that in compliance of the order dated 24.11.2014, consequent to the Establishment Order No.05/2078 dated 16.01.2017 issued by Additional Commissioner, CCO, Bhopal, the petitioner has been granted notional promotion in the grade of Superintendent w.e.f. 08.03.2001 and his seniority has been fixed in the grade of Superintendent just above Shri V. Damodaran Gautam and below Shri K.P. Muralidharan. The petitioner has been assigned seniority

at Sr. No.338A in All India Seniority list of Superintendents for the period 01.01.1998 to 31.12.2006 vide OM/Correction list dated 10.02.2017 issued by Directorate General of Human Resources Development, New Delhi. A copy of Establishment Order No.05/2078 dated 16.01.2017 and copy of OM/Correction list dated 10.02.2017 has been filed as Annexure R-2 with the reply. Therefore, it has been submitted by the respondents that order of this Tribunal has been fully complied with and there is no willful disobedience on the part of the respondents.

8. The petitioner has filed rejoinder to the response filed by the respondents, wherein he has reiterated his earlier stand. It has also been submitted in the rejoinder that though the respondents have promoted the petitioner notionally w.e.f. 08.03.2001 and the seniority position has been fixed to the post of Superintendent over and above Shri V. Damodaran Gautam in the combine seniority list of Superintendent of Central Excise Group-B of Bhopal cadre control zone and also fixed the seniority list of Superintendent of Central Excise for the period from 01.11.1998 to 31.12.2006, however, they have not considered the case of the petitioner for promotion to the post of Assistant Commissioner. Hence, the order of this Tribunal has not been complied in its true letter and spirit.

9. It has been further submitted by the petitioner in his rejoinder that his junior Shri V. Damodaran Gautam has been promoted to the post of Assistant Commissioner of Central Excise and Custom on 22.10.2014 and in the similar manner, some of the other incumbents have also been promoted to the post of Assistant Commissioner of Central Excise and Custom even after their retirement.

10. We have heard the learned counsel for both the parties.

11. Vide order dated 24.11.2014 in Original Application No.1148/2011, this Tribunal has held as under:

- “20.** (a) In the result, the Original Application is partly allowed.
- (b) It is hereby declared that the applicant is entitled to the promotion on the post of Superintendent w.e.f. 08.03.2001 when the respondent No.4 was so promoted.
- (c) However, we further declare that this is by way of notional promotion and he will not be entitled to get any monetary benefit/back wages of the said post.
- (d) The seniority list dated 03.11.2011 (Annexure A-1) of the cadre of Superintendents will have to be modified accordingly, placing the applicant immediately above the respondent No.4.
- (e) The respondents Nos.1 & 3 are directed to issue necessary order in this behalf and take necessary steps to carry out the modification in the seniority list dated 03.11.2011 (Annexure A-1), within a period of 8 weeks from the date of receipt of copy of this order.
- (f) No order as to costs.”

12. The respondents have specifically submitted in para 8 of their response to the Contempt Petition that they have filed W.P No.72/2016, which was finally decided by the Hon'ble High Court on 12.07.2016. The operative portion of the order passed by the Hon'ble High Court, is as under:

“6. If after taking note of the aforesaid principle of law and finding that the employee was already granted promotion on 26.12.2012 and taking note of the fact that he has retired and promotion is only made retrospectively w.e.f. 8.3.2001, for the present, in this case we see no reason to interfere in the matter exercising our extraordinary jurisdiction in the petition filed under Article 227 of the Constitution of India, however all the questions of law raised are kept open to be considered if required in a given case.

7. Accordingly, finding no case made out for the interference, the petition stands dismissed.”

13. Further, the respondents, in para 11, have submitted that in compliance of the order dated 24.11.2014, consequent to the Establishment Order No.05/2078 dated 16.01.2017 issued by Additional Commissioner, CCO, Bhopal, the petitioner has been granted notional promotion in the grade of Superintendent w.e.f. 08.03.2001 and his seniority has been fixed in the grade of Superintendent just above Shri V. Damodaran Gautam and below Shri K.P. Muralidharan. The petitioner has been assigned seniority at Sr. No.338A in All India Seniority list of Superintendents for the period 01.01.1998 to 31.12.2006 vide OM/Correction list dated

10.02.2017 issued by Directorate General of Human Resources Development, New Delhi.

14. From this, it is clear that the respondents, after consulting the Ministry of Finance, DoP&T, have availed the remedy in due process of law by challenging the order of this Tribunal before the jurisdictional Hon'ble High Court at Jabalpur by way of filing W.P No.72/2016. The said W.P was finally decided on 12.07.2016. Thereafter, the respondents have processed the matter further and ultimately the Establishment Order No.05/2078 dated 16.01.2017 was issued by the Additional Commissioner, CCO, Bhopal and the petitioner has been granted the benefits as per our order dated 24.11.2014.

15. It is pertinent to mention that regarding such compliance of our order, the petitioner has also admitted this fact. The only further submission of the petitioner is that in the meanwhile, the respondent department has promoted the junior persons to the post of Assistant Commissioner of Central Excise and Customs even after their retirement.

16. It is important to mention that in the Contempt Petition, the scope is very limited and we cannot go beyond our original orders passed in the Applications. Needless to say that why the respondent

department shall not consider the petitioner for promotion to the post of Assistant Commissioner from the date the junior persons have been promoted. Especially, as per Annexure R-2, the petitioner has been assigned seniority between Shri V. Damodaran Gautam and Shri K.P. Muralidharan and also has been placed in Sr. No.338A in All India Seniority List of Superintendents. There should not be any reason for non-consideration of promotion to the petition.

17. In view of the above, we are of the affirmed view that there is no intentional and willful disobedience on the part of the respondents.

18. With these observations, this Contempt Petition is dismissed and the respondents are discharged from the notice of contempt.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

am/-