

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

CPC 25/2013
In O.A. No. 360/2012

LIBRARY

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Sarat Chandra Ratho & Ors.
.....Applicant

-Vs-

Sumit Bose & Ors. (Customs)
.....Respondents

For the petitioner : Mr S.K. Datta, Counsel

For the respondents : Mr P.K. Roy and Mr K.K. Maity, Counsel

Date of Hearing : 29.04.2016

Date of Order : 09.05.2016

ORDER

JUSTICE V. C. GUPTA, JM:

This application of contempt has been filed by applicants Sarat Chandra Ratho and Rakesh Kumar Tyagi, who were applicants in O.A.No.360/2012.

2. The brief facts for deciding this CPC are that one O.A.174/1999 was filed by the applicants along with some others. Judgment dated 20.09.2008 was passed by this Tribunal directing the respondents to regularise the services of the applicants from initial date of ad hoc appointment and if needed adjustment of vacancies quota wise should be done for the subsequent years. In compliance of the aforesaid order passed in O.A.174/1999 an order was passed by the respondents on 20.09.2001. As the applicants were of the view that same was not passed in conformity with direction issued in O.A.174/1999 they challenged the same by filing another O.A.360/2002. This O.A was disposed of on 02.05.2008 directing the respondents to regularise the applicants as Appraiser with effect from the date of their initial appointment on ad hoc basis and further directed that if required adjustment of vacancies quota wise may be done in subsequent years as directed in O.A.174/1999. Respondents challenged the order by filing the WPCT No.22/2009. This petition was dismissed as withdrawn on 29.03.2010. In the said petition an interim order was also passed on 04.09.2009, but the same stand vacated by dismissal.

(J.C.G)

of the Writ Petition on 29.03.2010. Thereafter, the applicants filed a Contempt Petition bearing No.35/2010. The same was disposed of on 28.11.2011 because after withdrawal of the Writ Petition CAN was filed by the respondents in the High Court. This CPC was dismissed on the ground that matter is pending before the High Court and after dismissal of the same, CPC may be revived. The High Court finally dismissed the Writ Petition on 19.01.2012. Thereafter, the applicants filed M.A 209/2012 for revival of CPC. In the meantime, respondents preferred SLP No.20390/2012 against the High Court's order but SLP was also dismissed on 07.12.2012. However, M.A 209/2012 was dismissed before the decision of SLP on 27.11.2012 on the ground that SLP is pending. When the order of the Tribunal was not complied with after dismissal of the SLP, the present CPC was filed on 30.04.2013 on the allegation that order passed in O.A.360/2002 has not been complied with which was affirmed by the Apex Court. Notices were issued on 09.05.2013 to the respondents. The objections were filed by the respondents.

3. We have heard the learned counsel for the parties. It is not in dispute that the order dated 02.05.2008 passed in O.A.360/2012 was complied with by passing an order by the respondents after dismissal of SLP on 22.02.2013, which has been annexed by the applicants along with this application of contempt. The compliance order reads as under :

"GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CUSTOMS (AIRPORT & ADMINISTRATION)
CUSTOM HOUSE, 15/1, STRAND ROAD, KOLKATA – 700 001.

F. No. S51-22/2002 – Estt.

Dated : 22.02.2013

Establishment order No.36/2013

Consequent upon dismissal of Special Leave Petition by Hon'ble supreme Court vide order dated 07.12.2012 filed by the department against Hon'ble High Court's order dated 19.01.2012 and in respectful obedience of the Hon'ble High Court's order, the following Appraisers (retired) have been given deemed seniority in the grade of Appraisers from the date of their continuous officiation as indicated below against their names:

| Sl.No. | Name of the Officer(S/Sri) | Date of promotion as Appraiser on ad-hoc basis | Date of deemed seniority |
|--------|----------------------------|--|--------------------------|
| 01. | Sarat Chandra Ratho | 03.10.1986 | 03.10.1986 |
| 02. | Swapan Kumar Chaudhury | 03.10.1986 | 03.10.1986 |
| 03. | Rakesh Kumar Tyagi | 03.09.1987 | 03.09.1987 |
| 04. | Hari Prasad Goel | 06.09.1985 | 06.09.1985 |
| 05. | Ajit Ranjan Roy | 06.02.1990 | 06.02.1990 |

This order is made strictly in compliance with Hon'ble High Courts order, consequent upon dismissal of SLP filed by the department and is applicable to the petitioners only and no similarly circumstanced officer can claim such benefit at this stage.



This issues with the approval of Chief Commissioner of Customs, Kolkata Zone.

(Ashutosh Awasthi)
 Commissioner of Customs
 (Airport & Administration)
Custom House : Kolkata"

It has been contended by learned counsel for the applicants that after passing the order dated 22.02.2013 benefit of the order passed in O.A 360/2002 has been given to the applicants but subsequently withdraw the same and passed another order on 04.04.2013 by establishment Order No.87/2013. The benefit of regularisation was thus changed and was given from 10.12.2002 as evident from the order dated 04.04.2013. The relevant portion of the same is re-produced below :

"ESTABLISHMENT ORDER NO.87/2013

As per findings of the Review Departmental Promotion Committee Meeting held on 01.04.2013 & 02.04.2013 and in super-session of all earlier Establishment Orders relating to promotion/regularisation in the grade of Appraisers for the period 01.04.1997 to 31.12.2002, the following officers are hereby promoted/regularised in the grade of Appraiser w.e.f. the dates mentioned against their names:

| SI No | Name of the Officer | Feeder cadre | Date of regularisation |
|-------|---------------------|--------------|------------------------|
| 1 | | | |
| 68 | Sarat Chandra Ratho | P.O | 10.12.2002 |
| | | | |
| 76 | R.K.Tyagi | P.O | 10.12.2002 |
| | | | |
| 82 | M.G.Sherpa (ST) | | 10.12.2002 (Notional) |

The above mentioned officers are directed to note that:

- (i) Their promotion/regularisation is made without prejudice to the claims of their senior(s) who cannot be promoted now but may be promoted hereafter;
- (ii) They should exercise their option for pay fixation within a period of one month from the date of issue of this order;
- (iii) Consequent upon dismissal of Special Leave Petition by Hon'ble Supreme Court vide order dated 07.12.2012 filed by the department against Hon'ble High Court's order, Shri S.C.Ratho and Shri R.K.Tyagi have been given deemed seniority in the grade of Appraisers from the date of their continuous officiation. However, these officers were regularised post 1988 (under Recruitment Rules for Appraisers 1988) in terms of para 50 of Madras High Court's order dated 21.04.2006 which was subsequently upheld by Hon'ble Supreme Court vide order dated 16.05.2008.

This issues with the approval of Commissioner of Customs (Administration)."

After that a fresh tentative seniority list of Appraiser from 01.04.1997 to 31.12.2002 was published on the basis of order dated 04.04.2013. On the basis of which it has been contended that the order passed by the respondents on 04.04.2013 is in violation of the order passed by this Tribunal in O.A.360/2002.

4. The learned counsel for the respondents would submit that the application is time barred as the same is filed in the month of April 2013 in compliance of an order dated 02.05.2008. It was further submitted that the order dated 02.05.2008 passed in O.A. 360/2002 was complied with. Hence question of non compliance does not arise. A subsequent order was passed in view of another judgment of Madras High Court affirmed by the Apex Court. Hence there shall be no contempt.

5. It is not in dispute that the order passed in O.A.360/2002 was complied with by passing an order dated 22.02.2013 quoted herein above. It is no doubt true that subsequent benefit of regularisation was given in order dated 22.02.2013 was changed in the light of another judgment confirmed by the Supreme Court. When the order is complied there is no occasion to initiate the proceeding of contempt. If any, order has been subsequently amended or changed it will give a new cause of action and cannot be looked into in contempt jurisdiction. Therefore, we are of the firm view that this Contempt Petition is not maintainable. However, the applicant, if so advised, may take appropriate remedy against the order dated 04.04.2013 before appropriate forum.

6. With the above observation, CPC is dismissed. Notices issued be dropped. There will be no order as to costs.

(Jaya Das Gupta)
Administrative Member

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(Justice V.C.Gupta)
Judicial Member

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