

Order reserved on 24.09.2018

Order Pronounced on 28.09.2018

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

CIRCUIT SITTING AT NAINITAL

This is the 28.09.2018 of September, 2018.

Contempt Petition No. 331/00125 of 2017

In

ORIGINAL APPLICATION NO. 331/39/2015

Present:

**HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)
HON'BLE MR. MOHD. JAMSHED, MEMBER (A)**

Dr. Harish Kumar, S/o Shri Amar Nath Sharma, Scientist-E and Head Information Technology Division, Indian Council of Forestry Research and Education, Dehradun.

.....Applicant.

By Advocate: Shri G. K. Singh

VERSUS

1. Union of India through Secretary, Ministry of environment of Forest, Government of India, New Delhi.
2. Secretary, Ministry of Personnel, Department of Personnel and Training, Government of India, New Delhi.
3. Indian Council of Forestry Research and Education, Post Office New Forest, Dehradun through its Secretary.
4. Director General Council of Forestry Research and Education, Dehradun, Post Office, New Forest, Dehra Dun

.....Respondents

By Advocate : Shri P. K. Rai

Shri Vikas Pandey

ORDER

BY HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Case of applicant Dr. Harish Kumar is that the respondents have disobeyed the order dated 05.05.2016 passed in O.A. No. 331/39/2015 Dr. Harish Kumar v/s Union of India and others and committed contempt of Court and thereby action under law be taken against them.
2. Before proceeding further, a glance at the operative part of the order dated 05.05.2016 which reads as under:

"For the reasons recorded above the order of respondent No. 4 dated 5.9.2013 cancelling the promotion of the applicant to the post of scientist F is set aside. Respondents are directed to issue fresh order after considering the representation given by the applicant to Respondent No. 4. Thereafter following the rules of procedure, if the applicant is still aggrieved by the order passed by Respondent No. 4 he will be entitled to file an appeal before the Chairman ICFRE who shall decide the same after giving the applicant an opportunity of personal hearing."
3. Thereafter, respondent No. 1/ Union of India through Secretary, Ministry of Environment and Forest, Government of India, New Delhi in compliance to order dated 05.05.2017 vide order dated 23.08.2018 rejected the representation of applicant.
4. Applicant filed objections to the compliance report containing the order of rejection on the grounds:

- 1) Respondent did not comply with the order of the Tribunal setting aside the promotion of applicant to the post of Scientist- F;
- 2) Order of respondent rejecting the representation is based on the grounds which were earlier rejected by the Tribunal;
- 3) Decision of the respondent cannot be taken to mean that the rejection order gives a new cause of action to applicant to file a fresh O.A.;
- 4) Res-judicata.

5. We have heard and considered the arguments of the Learned Counsels for the parties and gone through the material on record.

6. It has been argued by the learned counsel for applicant that the respondent has not complied with the first direction of the Tribunal whereby cancellation of promotion of applicant was set aside. The respondent did not revert back the applicant to the post of Scientist-F and grant consequential relief after the order dated 05.05.2016.

7. However, order dated 05.05.2016 mandates that the respondents are directed to issue fresh order after considering the representation given by the applicant to Respondent No. 4. So, it would be after considering and disposing of the representation of the applicant that respondents would be bound to consider the question of issuing fresh orders on the basis of the decision disposing of the representation. Therefore, on this ground, no violation of order of Tribunal by the respondent is made out.

8. The second ground argued by learned counsel for applicant is that the order of respondent rejecting the representation is based on the grounds which were earlier rejected by the Tribunal. It has been urged that the respondent No. 1 while disposing of the

representation has virtually acted as an appellate authority over the order of the Tribunal and treated the order dated 05.05.2016 with contempt by placing reliance upon directions etc of the MoEF & CC and DoPT which had been considered and rejected by the tribunal vide order dated 05.05.2016. On the basis of its findings, tribunal had directed respondents to issue fresh order after considering the representation given by the applicant to Respondent No. 4 and therefore, the words in Para 10 of the order dated 05.05.2016 start with words 'For the reasons recorded above', the directions therein cannot, therefore, be read in isolation but along with findings in para 8 and 9 of the order dated 05.05.2016. Hence the contention of applicant is that respondent No. 1 while disposing of the representation wilfully and deliberately disregarded the finding of the Tribunal.

9. It would be necessary to look to the order dated 05.05.2016. The order directs the respondents to issue fresh order after considering the representation given by the applicant to Respondent No. 4 and gives liberty to applicant to file an appeal if aggrieved by order of respondent. The order of tribunal is not hedged by any direction to pass order in any particular manner or reasoning but left it to the wisdom of the respondents to decide the matter afresh.
10. It is settled law that when a court directs an authority to 'consider', it requires the authority to apply its mind to the facts and circumstances of the case and then take a decision thereon in accordance with law. An order which breaches any law is open to judicial review and in exercising the power of judicial review, resulting in the order being quashed, the court does not proceed to substitute its own decision in the matter, as that will amount to

exercising appellate power, but requires the authority to 'consider' and decide the matter again.

11. In the present case, the Tribunal required the respondent to consider and decide the matter afresh and was conscious of the fact that the decision may not go in favour of applicant and therefore, it observed that if the applicant is still aggrieved by the order passed by Respondent, he will be entitled to file an appeal before the Chairman ICFRE who shall decide the same after giving the applicant an opportunity of personal hearing. The respondent No. 1 as directed by the tribunal considered and decided the representation filed by the applicant and certainly there was no direction to decide the representation in a particular manner. Therefore, the contention of applicant that respondent No. 1 committed contempt of Tribunal while passing the order rejecting his representation is devoid of force of law and to be rejected.

12. Learned Counsel for applicant placed reliance on T.R.Dhananjaya v/s J.Vasudevan, AIR 1996 SC 302. However, the facts of the said case are entirely different from the facts of the present case. In the said case T.R.Dhananjaya (supra), the claim inter se had been adjudicated which was sought to be circumvented. In the present case, the Tribunal directed the respondents to consider the matter afresh and if aggrieved, applicant would be at liberty to file an appeal. The authority is of no avail to the applicant since in the present case the question had been left open by the tribunal for the respondent to decide afresh.

13. Applicant relied upon order dated 17.1.2013 Hon'ble High Court in Service Bench No. 66 of 2013 at Lucknow titled

Mahaveer Prasad Verma v/s Central Administrative Tribunal. The same lays down the scope of passing an order while disposing of a contempt application.

14. Applicant also argued that the decision of the respondent cannot be taken to mean that the rejection order gives a new cause of action to applicant to file a fresh O.A. as argued by respondents and relied upon UOI v/s Sh. Chattarsal decided on 12.09.2011 by Hon'ble High of Delhi in WP (c) No. 8341/2009 wherein despite direction of the tribunal that period of training be counted towards eligibility period of grant of benefits under the ACP Scheme, the same was not given effect to by department while granting ACP scheme benefit and therefore contempt petition was filed wherein the Tribunal not insisting on punishing gave opportunity to department to implement its decision and which order of the tribunal was challenged in the Hon'ble High Court. The Hon'ble High Court while upholding the order of tribunal discharging the contempt notice observed that if the alleged compliance order itself states and reflect that the order has not been complied with, the applicant cannot be directed to file an original application challenging the order passed in alleged compliance of Court's substantive order. However, in the present case, no direction was issued by the Tribunal for the respondent to follow while deciding the representation. Even so, vide order dated 22.05.2017, opportunity was given to respondent to comply with order dated 05.05.2016 with costs of Rs.20,000/- which has not been challenged in any forum. So, the facts of the cited case are altogether different from the facts of the case in the present O.A. and the finding in the cited case is inapplicable to the present case.

15. Learned Counsel for applicant relied upon case titled Union of India v/s Ashok Kumar Aggarwal decided by Hon'ble Apex Court on 22.11.2013 in C.A. No. 9454 of 2013 wherein submitted that respondents in instant case cannot take the plea that the rejection gives rise to a fresh cause of action and a fresh O.A. since, as submitted by LC for applicant that it would be barred by res-judicata. As noted above, the order dated 05.05.2016 itself gave the respondent to re-consider the representation of applicant afresh and so, the decision could go either way, therefore, applicant was given the right to appeal, if aggrieved by order of respondent No. 1. The plea of finality of the finding given by the tribunal would be gone into as and when the occasion arises. Suffice to say, at this moment, the order of respondent No. 1 does not give rise to a case of contempt of Tribunal by the respondents. The facts of case cited by applicant are altogether different from facts of present case.

16. Learned counsel for respondents relied upon J.S.Parihar v/s Ganpat Duggar, AIR 1997 SC 113 and submitted that the disposal of the representation by respondent No. 1 on the basis of direction of the tribunal gives rise to a fresh cause of action to the applicant to file application in an appropriate forum for judicial review. This apart, for the reasons mentioned above, we are of the opinion that no case of wilful contempt is made out on part of the respondents. Accordingly, application is dismissed. Notices are discharged.

Mohd. Jamshed)
Member (A)

(Rakesh Sagar Jain)
Member (J)

/Shashi/