

(Reserved on 18.12.2018)

***CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD***

This the **03rd** day of **January, 2019**

Present:

HON'BLE MS. AJANTA DAYALAN, MEMBER-A.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER-J.

**CIVIL MISC. EXEMPTION APPLICATION NO. 330/2714/2018
IN
CIVIL MISC. CONTEMPT PETITION NO. 330/0069/2018
IN
ORIGINAL APPLICATION NO. 330/00397/2012**

V.B.R. Umap

.....Applicant.

V E R S U S

Sh. S.K. Kohli, Secretary, Defence Finance / Financial Advisor (Defence Services), Government of India, New Delhi & Others.

..... Respondents

Present for the Applicant : Shri Shyamal Narain

Present for the Respondents: Shri L.P. Tiwari

ORDER ON EXEMPTION APPLICATION

(Delivered by Hon'ble Ms. Ajanta Dayalan, A.M)

This Tribunal vide order dated 06.12.2018 had directed the respondents to implement the Tribunal's earlier order dated 16.11.2017 till 18.12.2018. It was made clear to the learned counsel for the respondents that the order dated 16.11.2017 be complied with failing which the respondent no. 2 shall appear in person on the next date to explain the position. The learned counsel for the respondents has moved MA No. 2714/2018 seeking exemption from personal appearance of the respondent no. 2 and the respondent no. 2 was not present during the hearing.

2. The learned counsel for the applicant strenuously argues that the order of the Tribunal dated 16.11.2017 is yet to be complied with despite lapse of over one year and repeated directions of this Tribunal. He quotes that even on the earlier dated i.e. on 09.10.2018, the Tribunal had observed that the order could be complied with subject to outcome of the writ petition as there was no stay order and it was ordered that 'in case of failure to comply with the order, the respondent No. 2 shall appear in person on the next date to explain the position. This order is subject to outcome of the order of the Hon'ble High Court in the writ petition.'

3. The learned counsel for the applicant further states that despite the clear orders of this Tribunal twice for complying with the earlier orders failing which personal appearance of the respondent no. 2 was ordered, the respondent no. 2 has failed to appear in person when the case was called out and instead an exemption application has been moved. He states that this is clear violation of the orders of the Tribunal and some coercive action is required to be taken as per Contempt of Courts Act and rules therein specifically Rule 9. He also states that the writ petition filed by the respondents in the Hon'ble High Court has already been dismissed and the SLP is yet to be filed and as such the order of the Tribunal has attained finality and needs to be implemented.

4. The learned counsel for the applicant vehemently argues that though the respondents are claiming that they have made best efforts for compliance, the fact remains that no compliance has been made. He states that no effort has been made by the respondents' department to extend the benefit already granted by the Tribunal to the applicant. He finds fault with the compliance affidavit filed by the respondents as no effective action has been taken by the department to grant relief and now the respondents are stating that objections were raised by the Department of Legal Affairs and UPSC, though the proposal to UPSC itself does not recommend the case. He also states that the exemption application cannot be allowed as the grounds for seeking exemption sought are very general and cannot be allowed to come in the way of implementation of the Tribunal's order. He states that these grounds are general such as Parliament session is going on which cannot justify clear disobedience of the Tribunal's order.

5. The learned counsel for the respondents states that there is no willful disobedience on the part of the department in not complying with the order of this Tribunal. He states that rather, all efforts have been made to comply with the order as far as the respondents are concerned. The learned counsel for the respondents further states that in compliance of the Tribunal's order, a proposal was sent to the Department of Legal Affairs and to UPSC. This was required as the Committee duly constituted for promotion to JAG Grade is to be headed by the Chairman / Member of the UPSC with four other

members. Also, as the court case was going on in the matter, views of the department of Legal Affairs were required. Accordingly, the case was sent to the Department of Legal Affairs and finally to UPSC. The case was then returned from UPSC advising filing of SLP before the Hon'ble Supreme Court. In support of this contention, the learned counsel for the respondents placed letter dated 14.12.2018 at Annexure -6 to the Affidavit filed on 17.12.2018 giving detailed position of the case and finally concluding as follows: -

“In view of the position explained above, the Commission is requested to kindly consider the proposal and convene a review DPC in respect of Shri Vivek B. Umap, IDAS against the vacancy year 2008-09 at the earliest please.”

The learned counsel for the respondents further states that UPSC returned the proposal for holding review DPC. He also placed on record reference dated 14.12.2018 from UPSC showing the proposal as having been returned.

6. Regarding exemption from personal appearance, the learned counsel for the respondents states that the respondent no. 2 could not appear in person due to ongoing Parliament session. The learned counsel for the respondents also states that the respondent no. 2 alone is not competent to implement the order as the same is beyond her capacity as the Review Committee is to be held in the Chairmanship of Chairman/Member of UPSC. The respondent no. 2 did sent the proposal through the Ministry of Defence to the Department of Legal Affairs and UPSC from where it was returned. He

also pleads that neither the Department of Legal Affairs nor the UPSC has been impleaded in the contempt petition or in the OA and hence it was not within the purview of the parties in the OA as well as in the contempt petition to implement the order of the Tribunal.

7. We observe that it is true that the personal appearance was ordered by the Tribunal twice in respect of the respondent no. 2. Today also she is not present in the Court. Also, we note that exemption application has been moved only on 17.12.2018 giving no time to the Tribunal to consider the same effectively before the next date of hearing. It is also true that the order of the Tribunal has not yet been complied with, even though the writ petition filed by the respondents has been dismissed by the Hon'ble High Court in November 2018.

8. We, however, note the learned counsel for the respondents' averment that there is no willful disobedience of the Tribunal's order. Respondent no. 2 sent the proposal to the Department of Legal Affairs and UPSC, which was mandatory to do as per the procedure laid down for grant of benefit ordered in respect of the applicant by this Tribunal. Hence, there was no way that she could avoid such reference or comply with the order at her own level. The proposal that has gone from the Ministry of Defence was detailed and complete and was not returned by the UPSC due to lack of information, but only because the UPSC relied on the advice of the Department of Legal

Affairs which in turn advised for filing SLP before the Hon'ble Supreme Court. Neither the UPSC nor the Department of Legal Affairs was party in the OA and hence they were not in any manner bound by the directions of the Tribunal. Being thus limited in her capacity to implement the order, she cannot be personally held responsible for non-compliance.

9. Regarding personal appearance, the grounds given in the Affidavit filed on 17.12.2018, though not fully convincing, but still do need to be taken in to account. It is generally expected that during the Parliament session, top ranking officers in the Government of India are not to move out of Delhi. This may have compelled non-appearance on her part on the date fixed.

10. We, in view of all above, exempt her from personal appearance on 18.12.2018. We, however, direct the respondents to comply with the order within three months. This timeline will be observed even if the respondents' department decides to file SLP against the order of the Hon'ble High Court, subject to the order of the Superior Court.

11. List on 04.04.2019.

(Rakesh Sagar Jain)
Member (J)

(Ajanta Dayalan)
Member (A)

Anand...