

(Reserved on 21.02.19)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
(Circuit Bench at Nainital)**

This the 22nd day of February, **2019**.

HON'BLE MS AJANTA DAYALAN, MEMBER (A).
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J).

Contempt Petition No.331/00173 of 2018
in
Original Application Number. 331/0054/2015.

Laxmi Dutt Pachouli, a/a 50 years, Son of Sri Kheemanand Pachouli,
R/o Indira Colony, Phase-2, Gas Godoun Road, Kusumkhera, Haldwani,
District - Nainital.

.....Applicant.

VE R S U S

1. Mr. Pradeep Kumar Goyal, Commissioner, Central Goods & Services Tax, Commissionarte (Cadre Control), opposite Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut (U.P).
2. Mr. Roshan Lal, Additional Commissioner, Commissioner, Central Goods & Services Tax, Commissionarte (Cadre Control), opposite Chaudhary Charan Singh University, Mangal Pandey Nagar, Meerut (U.P).
3. Mr. B.K. Manthan, Under Secretary (Ad.III A/IIIB), Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs, Ground Floor, Hudco Vishala Building, Bhikaji Cama Place, R.K. Puram, New Delhi - 110066.

.....Respondent.

Advocate for the applicant : Shri N.K. Papnoi
Advocate for the Respondents: Shri P.K. Rai

O R D E R

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

This contempt petition has been filed by the petitioner Laxmi Dutt Pachouli stating that the order of this Tribunal dated 19.12.2017 in OA No. 54/2018 is yet to be complied with.

2. The learned counsel for the petitioner stated that in the original application no. 54/2015 filed by the present petitioner, this Tribunal vide its order dated 19.12.2017 had directed the respondent department 'to convene a Review DPC to consider the case of the applicant for promotion to the post of L.D.C. and if found suitable, the applicant will be promoted to the post of L.D.C. with all consequential benefits'. The Tribunal had further directed that this exercise be completed within a period of four months from the date of receipt of certified copy of the order.

3. The learned counsel for the petitioner pleaded that despite the order of the this Tribunal dated 19.12.2017, compliance of order of the Tribunal is yet to be made. He also stated that in the compliance affidavit filed by the respondents department, compliance has been shown to have been made but in fact no compliance has been made as the petitioner is yet to be promoted to the post of L.D.C. The counsel for the petitioner further argued that in the Review DPC meeting held on 17.12.2018, the vacancies available for promotion have been reduced even though as per information made available to him on 01.02.2019 (Annexure -1 to the objection to compliance affidavit) under RTI Act, the posts of L.D.C. available for promotion in Meerut Division were 02 for the year 2008-09; 05 of the year 2009-10; 04 for the year 2010-11 , 03 for the year 2011-12 and 02 for the year 2012-13. Learned counsel for the petitioner pleaded that as against these vacant posts, the vacancies taken into consideration in the Review DPC were only 02 for the year 2008-09, 04 for the year 2009-10, 02 for the year 2010-11 and excess in the years 2011-12 and 2012-13. The learned counsel for the petitioner pleaded that in case correct vacancies had been taken into account in the Review DPC, the petitioner would have been promoted as L.D.C. in accordance with the orders of the Tribunal.

4. Learned counsel for the respondents contested the claim of the petitioner and stated that the order of the Tribunal has been fully complied with by the respondent department. He also stated that in support of his statement, he has filed a compliance affidavit. He further stated that it would seen therefrom that the Review DPC was held on 10.12.2018 in compliance of the orders of this Tribunal and the case of the petitioner

for promotion to the grade of L.D.C. was considered by the Review D.P.C. He stated that the Review D.P.C., after considering the claim of the petitioner alongwith other eligible candidates, promoted four officials. However, the petitioner could not be promoted as he became eligible only in the year 2010-11 and in this year there were two vacancies. Against these vacancies two persons were promoted. Both of them were senior to the petitioner and had passed the examination prior to or in the same year in which the petitioner had passed the exam. As such, the petitioner could not be promoted despite holding of Review D.P.C.

5. We have heard both the learned counsels for the parties and have gone through the pleadings. We have also given our thoughtful consideration to the matter.

6. We observe that this is a contempt petition and as such, we are only to see whether a case for contempt has been made out. In this connection, we observe that the order of this Tribunal dated 19.12.2017 is quite detailed. The operative portion of the order is contained in para 30 which reads as follows: -

‘30. In view of the above, for the forgoing reasons, we are of the considered view that the OA deserves to be allowed. It is accordingly allowed to the extent that so far as amended Recruitment Rules are concerned, the Government has power to amend those rules and as such the prayer of quashing of amended Recruitment Rules is declined. So far as other relief i.e. the applicant sought promotion from the date his juniors have been promoted against the vacancies which occurred prior to amendment in the Recruitment Rules, is concerned, the applicant is entitled for promotion from the date his juniors were promoted after the applicant qualified the typing test and accordingly the impugned order dated 10.08.2015 vide which pursuant to Order of this Tribunal dated 26.05.2015 passed in OA 26/2015, the representation of the applicant was rejected, is quashed and the respondents are directed to convene a Review DPC to consider the case of the applicant for promotion to the post of L.D.C and if found suitable, the applicant be promoted to the post of L.D.C with all consequential benefits. The aforesaid exercise shall be completed within a period of four months from the date of receipt of certified copy of this Order. There shall be no order as to costs.’

7. It is seen from the above that the Tribunal has declined the prayer for quashing the amended Recruitment Rules. The Tribunal has, however, quashed order dated 10.08.2015 rejecting the representation of the applicant. It has further directed the respondents to convene a Review D.P.C. to consider the case of the petitioner and if found suitable to promote him as L.D.C with all consequential benefits within four

months. The Tribunal has therefore, directed the respondents to convene Review D.P.C and to consider the case of the applicant. We observe that vide compliance affidavit, the respondents have shown that immediately after the orders of the Tribunal, they referred the matter to the Board for holding Review D.P.C. and after the Board's approval, the Review D.P.C. was held on 10.12.2018. That the case of the petitioner was considered in the Review D.P.C. is clear from the order dated 17.12.2018. This fact is not denied by the petitioner himself during arguments or in his rejoinder. It is also a fact that the petitioner was not promoted consequent to the Review DPC even though four other officials were promoted. However, all the four are stated to be senior to the petitioner and have also passed exam for promotion prior to or in the same year as the petitioner and as such, they had the first right for promotion. We also observe that the petitioner was eligible for promotion for the year 2010-11 for which two vacancies were earmarked and both these vacancies have been filled up. The counsel for the applicant has pleaded that the vacancies have been suppressed both with reference to the vacancies exhibited in the initial para of the order dated 17.12.2018 as well as the vacancy position dated 01.02.2019 received by the petitioner under RTI Act. We however, note that there was no specific direction of this Tribunal regarding number of vacancies or regarding vacant positions that are to be considered by the Review D.P.C. for promotion. We further observe that immediately after the orders of the Tribunal, the respondents have taken action to seek approval of the Board to hold Review DPC and after obtaining Board's approval, they have held the Review DPC. Further, the Review DPC has been held keeping in view the pre-revised Recruitment Rules.

8. In view of the above position, we have no doubt that the order of the Tribunal has been complied with and there is no wilful disobedience on the part of the respondents. Accordingly, the Contempt Petition is dismissed and the notices issued to the respondents are discharged. In case the petitioner is aggrieved by the order dated 17.12.2018, he is at liberty to take appropriate action by making representation to the department and, if found necessary, to move an application on original side as per law as this may amount to fresh cause of action.

MEMBER- J.

MEMBER- A.

Anand...