

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

**CP No. 290/00020/2017 (OA No.30/2011) &
CP No. 290/00023/2017 (OA No. 14/2009)**

RESERVED ON : 15.07.2019
PRONOUNCED ON : 31.07.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

CP No.20/2017 (OA No.30/2011)

Yogesh Vyas s/o Shri Badri Narayan Vyas, aged 39 years, R/o Plot No.-22-B, Laxmi Nagar, Paota "B" Road, Jodhpur (Raj.).

...Petitioner

(By Advocate: Shri K.K.Shah)

Versus

Shri Rajesh Tiwari, General Manager, North Western Railway, Jaipur

...Respondents

(By Advocate: Shri Kamal Dave)

CP No.23/2017 (OA No.14/2009)

Sunil Kumar s/o Shri Govind Prasad, aged 46 years, R/o Naval Basti, IIIrd Road Sardarpura, Jodhpur

...Petitioner

(By Advocate: Shri K.K.Shah)

Versus

Shri Girish Pillai, General Manager, Northern-Western
Railway, Jaipur.

...Respondents

(By Advocate: Shri Kamal Dave)

ORDER

Per Mrs. Hina P.Shah

These Contempt Petitions have been filed for alleged non-compliance of the order dated 11.1.2013 passed in OA No.30/2011 with other connected OAs, and the order dated 22.7.2011 passed in OA No.14/2009. Both these orders were passed relying on the order dated 12.8.2010 of this Tribunal passed in OA No. 243/2006.

2. It is the submission of the petitioners that this Tribunal had directed the respondents to consider the case of the petitioners for appointment to the post of Fresh Face Substitute as per the approved list prepared by the respondents and this process was required to be completed within a period of three months from the date of receipt of the order, vide order dated 12.8.2010. Against the order dated 12.8.2010 passed by this Tribunal in OA No.243/2006, the respondents filed DB Civil Writ Petition No. 10603/2010 which was dismissed by the Hon'ble High Court vide order dated 3.12.2015. Thereafter, since the said order was not complied with, they have served notice

to the respondents alongwith the order in the Writ Petition, but the respondents have not complied with the order of this Tribunal, therefore, the petitioners have filed the present Contempt Petitions. The contention of the petitioners is that till date, the respondents have not filed any SLP and therefore, they have deliberately and wilfully disobeyed the orders of this Tribunal, therefore, contempt action should be taken against them.

3. On the other hand, the respondents have filed reply stating that they have challenged the order of this Tribunal dated 12.8.2010 before the Hon'ble High Court in DB Civil Writ Petition No.10603/2010 and the Hon'ble High Court vide order dated 3.12.2015 had dismissed the Writ Petition of the respondents. Thereafter the respondents preferred a Review Petition, which is under consideration and pending before the Hon'ble High Court and, therefore, there is no question of deliberate disobedience of the order passed by this Tribunal.

4. Both the parties strenuously argued on the point of maintainability of these Contempt Petitions as also on disobedience of the orders.

5. It is the plea of the respondents that the Contempt Petitions be heard on maintainability. The respondent have raised objection to the effect that the Contempt Petitions have not been filed by the petitioners within the time frame as per rules. The OAs were decided vide order dated 11.1.2013 and 22.7.2011 and these Contempt Petitions were filed on 3.8.2017 and 18.8.2017. The respondents have stated that the Contempt Petitions were required to be filed within one year from the date of passing of the order by this Tribunal. In support of their contention, the respondents have relied on the judgment of the Hon'ble Apex Court in the case of **Om Prakash Jaiswal vs. D.K.Mittal** in Appeal (Civil) 1632 of 1990 decided on 22nd February, 2000.

6. Per contra, the learned counsel for the petitioners stated that the order of the Hon'ble High Court was passed on 3.12.2015 and they were pursuing the matter with the respondents and served a copy of the order of the Hon'ble High Court in DB Civil Writ Petition No.10603/2010 through notice of their advocate and when order of this Tribunal is not complied, they have filed the present Contempt Petitions. The respondents have not filed any SLP, however, a Review Petition is filed before the Hon'ble High Court,

which is pending. On the question of maintainability of Contempt Petitions, the petitioners have relied on the judgment of the Hon'ble Apex Court in the case of **Pallav Seth vs. Custodian and Ors.**, (2001) 7 SCC 549 stating that the judgment in Om Prakash Jaiswal's case has been over ruled by the Hon'ble Apex Court in the case of Pallav Seth.

7. Considered the rival contentions of the parties and perused the material available on record.

8. So far as the judgments relied upon by both the parties is concerned, it would be relevant to mention here that the Hon'ble Madras High Court in a matter with regard to limitation in filing Contempt Petition vide judgment dated 11.4.2018 passed in C.P. No.377/2018 in the case of M.Santhi vs. Mr. Pradeep Yadav has discussed the ratio of various judgments including that of Om Prakash Jaiswal and Pallav Seth and in para-29 observed as under:-

29. The High Court's cannot invoke the powers under Article 215 of the Constitution of India, in all the cases by entertaining the contempt application beyond the period of one year, so as to dilute or eradicate the law prescribed under Section 20 of the Contempt of Courts Act, 1971. All contempt applications ought to be filed within the period of limitation prescribed under Section 20 of the Contempt of Courts Act, 1971. The High Court on exceptional circumstances, on arriving a conclusion that a gross injustice to the society or the case is of public importance, then the inherent powers provided under Article

215 of the Constitution of India, can be exercised without reference to Section 20 of the Contempt of Courts Act. A litigant may come out with an interpretation that an injustice is caused to all the orders or judgements passed by the High Courts. Such a general proposition, as advanced by the learned counsel appearing for the petitioner deserves no merit consideration. No doubt, the litigants approach the Court to get justice, that does not mean that all the contempt applications have to be entertained after a period of one year prescribed under Section 20 of the Contempt of Courts Act, 1971. Generalisation in this regard can never be encouraged. What exactly the circumstances warranting interference under Article 215 of the Constitution of India has to be decided judiciously and applying the peculiar facts and circumstances prevailing in each and every case. General application in this regard is certainly impermissible and Courts have to interpret these provisions in a pragmatic way than in a general manner. In other words, the principles of constructive interpretation is to be adopted while interpreting the period of limitation under Section 20 of the Contempt of Courts Act as well as Article 215 of the Constitution of India. Thus, this Court is not inclined to consider the arguments advanced by the learned counsel appearing for the petitioner by citing the above judgement of the Hon'ble Supreme Court.+

8. In the instant case, after going through the pleadings, it transpired that for non-compliance of the order dated 11.1.2013 and 22.7.2011 passed in OA No.30/2011 and 14/2009, these Contempt Petitions have been filed on 3.8.2017 and 18.8.2017 whereas the limitation for filing Contempt Petition under the Contempt of Courts Act, 1971 is one year. Section 20 of the said Act prescribes as under:-

20. Limitation for actions for contempt

No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed.

9. The Hon'ble Rajasthan High Court has dismissed the DB Civil Writ Petition No.10603/2010 vide order dated 3.12.2015. The petitioners should have approached this Tribunal within one year of passing of the order in the said Writ Petition, but they have filed the present Contempt Petitions on 3.8.2017 and 18.8.2017. The period of one year, if counted from 3.12.2015 ends on 3.12.2016. It is stated by the petitioners that they have approached the respondents requesting for compliance through letter of their advocate dated 22.7.2016/18.7.2016, but it was after a period of about 7 month of passing of the order in the Writ Petition, without having initiated contempt proceedings for non-compliance. There is no provision under the said Contempt of Courts Act to condone the delay in filing the Contempt Petition. Therefore, we are of the view that the Contempt Petitions are not maintainable since these are filed beyond the period of limitation.

10. Accordingly these Contempt Petitions are dismissed. Notices issued are discharged.

(ARCHANA NIGAM)
ADMV. MEMBER
R/

(HINA P.SHAH)
JUDL. MEMBER

