

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

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**C.P. No. 290/00050/2016(OA No.243/2006),
CP No. 290/00052/2016 (OA No.243/2006) &
CP No. 290/00016/2017 (OA No.39/2016)**

RESERVED ON : 15.07.2019
PRONOUNCED ON : 25.07.2019

CORAM:

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

CP No.50/2016 (OA No.243/2006)

1. Vinod Kumar s/o Shri Kapil Dev, aged 42 years, R/o – T-112, Old Loco Colony, Jodhpur (Raj.)
2. Deepak Mathur s/o Shri Shyam Babu Mathur, aged 41 years, R/o C/o Dayanand Tiwari, Beldaron Ki Gali, Baiji Ka Talab, Jodhpur

...Petitioners

(By Advocate: Shri K.K.Shah)

Versus

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

...Respondent

(By Advocate: Shri Kamal Dave)

CP No.52/2016 (OA No.243/2006)

1. Mohit Sharma s/o Shri Subhash Chandra Sharma, aged about 30 years, resident of 6/W/89, Kuri Bhagtasni Housing Board, Jodhpur (Raj.)
2. Hanuman S/o Shri Ladhu Ram aged about 31 years resident of Giriraj Colony, Chopasani Road, Village and Post Suthala, Jodhpur, Raj.

3. Gajendra Sharma s/o Shri Late Babu Lal Sharma aged about 37 years, resident of 2/910, Kuri Bhagtasni Housing Board, Jodhpur.

...Petitioners

(By Advocate: Shri J.K.Mishra)

Versus

1. Shri Anil Singhal, General Manager, North Western Railway, Head Quarter, Jaipur PIN: 302017
2. Shri Surya Prakash, Sr. Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur. PIN: 342001.
3. Shri Rajesh Tiwari, General Manager, North Western Railway. Hqrs, Jaipur Zone, Near Jawahar Circle, Jaipur-302017.

...Respondents

(By Advocate: Shri Kamal Dave)

CP No.16/2017 (OA No.39/2016)

Mukesh Chandra Dave, s/o Shri Ram Lal, aged 44 years, R/o-41, Vijay Bhawan, Near Tapariya Bera, Outside Chandpole, Jodhpur.

...Petitioner

(By Advocate: Shri K.K.Shah)

Versus

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

...Respondents

(By Advocate: Shri Kamal Dave)

ORDER

Per Mrs. Hina P.Shah

All these Contempt Petitions have been filed for alleged non-compliance of the order dated 12.8.2010

passed in OA No.243/2006 and order dated 10.04.2017 passed in OA No.39/2016 by this Tribunal on the same issue.

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. Against the order passed by this Tribunal, 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, the petitioners filed the present Contempt Petitions on 21.7.2016, 2.8.2016 and 19.7.2017. 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. Thus, 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 noticed that the OA No. 39/2016 was disposed of vide order dated 10.4.2017 and Contempt Petition No.16/2017 in this OA was filed on 19.7.2017, as such, it is within limitation.

6. So far as C.P. No.50/2016 and 52/2016 are concerned, 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 OA was decided vide order dated 12.8.2010 and the present Contempt Petitions were filed on 21.7.2016 and 2.8.2016. 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 and, therefore, the Tribunal cannot take cognizance of the Contempt Petitions as they have not been filed as per rules. 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.

7. 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 have filed the present Contempt Petitions on 21.7.2016 and 2.8.2016, which are within time as the same are filed within one year from the order of the Hon'ble High Court. The petitioners have relied on the judgment of the Hon'ble Apex Court in the case of **Pallav Seth vs. Custodian and Others**, (2001) 7 SCC 549. They have further stated that the judgment in Om Prakash Jaiswal's case has been over ruled by the Apex Court in Pallav Seth consisting of a Bench of three Judges. It has been pointed out that the Apex Court in Om Prakash Jaiswal's case had not correctly decided to the extent that the judgment held that mere issuance of a show-cause

notice was not the initiation of contempt proceedings by the court. The petitioners relied on Para 38, 41 and 42 of the said judgment, which are in the following terms:-

"38. The Rules so framed by all the courts in India do show that proceedings are initiated inter alia with the filing of an application or a petition in that behalf. If, however, proceedings are not initiated by filing of an application within a period of one year from the date on which the contempt is alleged to have been committed then the court shall not have jurisdiction to punish for contempt. If, on the other hand, proceedings are properly initiated by the filing of an application, in the case of civil contempt like the present before the Court within the period of limitation then the provisions of Section 20 will not stand in the way of court exercising its jurisdiction.

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41. One of the principles underlying the law of limitation is that a litigant must act diligently and not sleep over its rights. In this background such an interpretation should be placed on Section 20 of the Act which does not lead to an anomalous result causing hardship to the party who may have acted with utmost diligence and because of the inaction on the part of the court, a contemner cannot be made to suffer. Interpreting the section in the manner canvassed by Mr Venugopal would mean that the court would be rendered powerless to punish even though it may be fully convinced of the blatant nature of the contempt having been committed and the same having been brought to the notice of the court soon after the committal of the contempt and within the period of one year of the same. Section 20, therefore, has to be construed in a manner which would avoid such an anomaly and hardship both as regards the litigants as also by placing a pointless fetter on the part of the court to punish for its contempt. An interpretation of Section 20, like the one canvassed by the appellant, which would render the constitutional power of the courts nugatory in taking action for contempt even in cases of gross contempt, successfully hidden for a period of one year by practising fraud by the

contemner would render Section 20 as liable to be regarded as being in conflict with Article 129 and/or Article 215. Such a rigid interpretation must therefore be avoided.

42. The decision in Om Prakash Jaiswal case to the effect the initiation of proceedings under Section 20 can only be said to have occurred when the court formed the prima facie opinion that contempt has been committed and issued notice to the contemnor to show cause why it should not be punished, is taking too narrow a view of Section 20 which does not seem to be warranted and is not only going to cause hardship but would perpetrate injustice. A provision like Section 20 has to be interpreted having regard to the realities of the situation. For instance, in a case where a contempt of a subordinate is committed, a report is prepared whether on an application to court or otherwise, and reference made by the subordinate court to the High Court. It is only thereafter that a high Court can take further action under Section 15. In the process, more often than not, a period of one year elapses. If the interpretation of Section 20 put in Om Prakash Jaisal case is correct, it would mean that notwithstanding both the subordinate court and the High Court being prima facie satisfied that contempt has been committed the High Court would become powerless to take any action. On the other hand, if the filing of an application before the subordinate court of the High Court, making of a reference by a subordinate court on its own motion or the filing of an application before an Advocate General for permission to initiate contempt proceedings is regarded as initiation by the court for the purpose of Section 20, then such an interpretation would not impinge on or stultify the power of the High Court to punish for contempt which power, de hors the Contempt of Court Act, 1971 is enshrined in Article 215 of the Constitution. Such an interpretation of Section 20 would harmonise that section with the powers to the courts to punish for contempt which is recognised by the Constitution. "

In the above matter, the Hon'ble Apex Court held that action for contempt is divisible into two categories, namely, that initiated suo motu by the court and that instituted otherwise than on the court's own motion. The mode of initiation in each would necessarily be different. While in the case of suo motu proceedings, it is the court itself which must initiate by issuing a notice, in the other cases initiation can only be by a party filing an application. Therefore, the proper construction to be placed on Section 20 must be that action must be initiated, either by filing of an application or by the court issuing notice suo motu, within a period of one year from the date on which the contempt is alleged to have been committed.

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

9. After going through both the judgments relied by the petitioners as well as respondents, we are of the view that these Contempt Petitions are maintainable. From the pleadings it reveals that the main order in OA No.243/2006 was passed on 12.8.2010 and the subsequent order were passed on the basis of this order. Against the order dated 12.8.2010, the respondents approached the Hon'ble High

Court by way of D.B.Civil Writ Petition No.10603/2010. From the material placed on record, it reveals that the Hon'ble High Court vide interim order dated 28.1.2011 stayed operation of the order dated 12.8.2010 till the final outcome of the Writ Petition. The said Writ Petition was finally dismissed vide order dated 3.12.2015. During the pendency of the Writ Petition, the petitioners have not filed Contempt Petitions, obviously, due to the fact that the order of this Tribunal dated 12.8.2010 was stayed till the final outcome of the Writ Petition and therefore, no contempt could lie without knowing the final verdict of the Hon'ble High Court. On dismissal of the said Writ Petition, the petitioners have filed Contempt Petitions within one year. In these facts and circumstances, viewing the matter in the light of the ratio decided by the Hon'ble Apex Court in the case of Pallav Seth (supra), the contention of the respondents that these Contempt Petitions are not maintainable, is not acceptable.

9. So far as the question of non-compliance of the orders of this Tribunal is concerned, since the Review Petition in the matter is pending consideration before the Hon'ble High Court, therefore, at this stage, we think it appropriate not to consider the matter of alleged non-compliance of the

orders in these Contempt Petitions till the final outcome of the Review Petition. Respondents are directed to place on record the status/details of the Review Petition pending before the Hon'ble High Court, till then these Contempt Petitions are kept in abeyance.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/