

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

CPC No. 350/00076/2016
OA No.350/00 951/2015
Disposed of on 17.07.2015

Date of hearing : 05.12.2016
Dated of order : 09.12.2016

Present:

THE HON'BLE MR. JUSTICE V.C.GUPTA, JUDICIAL MEMBER
THE HON'BLE MS. JAYA DAS GUPTA, ADMINISTRATIVE MEMBER

.....

Shri Jeetendra Nath Sharma, aged about 55 years, S/o. Late Sanat Kumar Sharma, Sr. T.G.T. Teacher, P. No. 601379 working in Gun & Shell Fy. High School, Cossipore, Kolkata-700 002, R/o - 48/49A, Swiss Park, Kolkata-700 033.

.....Petitioner

VERSUS

Shri A.K.Prabhakar, aged about 59 years, 11 months, working as Chairman/DGOF, Ordnance Factory Board, Ministry of Defence, Govt. of India, 10A, S.K.Bose Road, Kolkata-700 001.

....Respondent

Counsel for the Petitioner :Mr.S.K.De,
Advocate

Counsel for the Respondents :Mr. D.N.Ray & Mr.S.Paul,
Advocate

ORDER

MS.JAYA DAS GUPTA, AM:

The Petitioner (Shri Jeetendra Nath Sharma) working as Sr. T.G.T. Teacher Gun & Shell Fy High School, Cossipore, Kolkata has filed this Contempt Petition stating inter alia that he along with others had filed OA No. 951/2015 before this Bench praying for

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declaration that depriving of teaching staff working under various Ordnance Factories to switchover from erstwhile Chatopadhya Commission Scheme to MACP Scheme is discriminatory unconstitutional and depriving of equal benefit as given to other Civilian employees and to direct the respondents to allow the benefit of three up gradation in grade pay of particular pay bands on completion of 10, 20 and 30 years of service under the MACP Scheme with effect from 01.09.2008 to all the applicants from their respective date of eligibility with financial benefit of back wages. This Tribunal disposed of the OA on 17.7.2015 with the following direction:

"3. Thereafter, nothing transpired notwithstanding that the said decision was for resolving the issue. Learned counsel for the applicants in response to the query raised by this Tribunal would categorically submit that the applicants recorded their stand that they wasn't to switch over to MACP Scheme and do not want to continue with the old scheme. As such he would pray for allowing this application.

4. Per contras, the learned counsel for the respondents by highlighting the technical points in this OA would submit that earlier OA 350/01594/2014 was filed before this Tribunal and subsequently it was withdrawn on 20.04.2015 and the applicants filed the present OA without having any cause of action and over and above that there is a delay of almost five years.

5. It would not be out of place to mentioned here that by way of abundant caution so to say "abundans cautela," the M.A has been filed for getting the delay condoned, if any. They also sought permission from this Tribunal to file this O.A in representative capacity on behalf of members of the teacher's community working under the Ordnance Factory. In our opinion the prayer in the delay application and also for

permitting the applicants to file the application in a representative capacity are perfectly justified because they are still in service and this issue has been lingering for over a decade. This is a continuing cause of action and the limitation cannot be pressed into service as against the applicants. Accordingly the M.A is allowed and the applicants are allowed to file this O.A in a representative capacity.

6. Annexure A/7 as well as Annexure A/9 would exemplify and demonstrate that initially the effort at the instance of the Teachers Association concerned took up momentum but thereafter it came to a grinding halt. Learned counsel for the applicants without any fear of contradiction would submit that after holding the meeting on 21.04.2010 nothing transpired, whereas at this juncture learned counsel for the Respondents would vehemently put forth that if opportunity is given thread bare the details would be placed before this Tribunal by way of reply. However, we see no reason for retaining this O.A pending and would like to give the following direction.

In view of mandate highlighted in the MACP Scheme supra the respondent No.2 is directed to take up the issue urgently with the Government and try to resolve the issue preferably within a period of 6 months from the date of receipt of copy of this order.

O.A is disposed of. No costs."

It is alleged by the applicant, in compliance of the order, the Respondents have not intimated any decision taken on his grievance nor have they granted the MACP benefits to him. Hence by filing the Petition Contempt Petition, he has prayed as under:

"PRAYER:

(i) The Petitioner very humbly prays before the Hon'ble Tribunal for passing appropriate orders and direction against the alleged Contemnor- Respondent for Contempt

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committed by disobeying the orders in OA/350/00951/2015;

(ii) Any other relief as deemed fit and proper in the circumstances need."

2. Through the affidavit filed on 12th July, 2016, the Respondent has brought to the notice of this Tribunal a copy of the order dated 28.03.2016 passed in compliance of the order of this Tribunal, cited supra. The full text of the said order dated 28.03.2016 is extracted hereunder for ready reference:

"SPEAKING ORDER

No.340/OA-
350/00951/2015/JNS
DTD: 28/03/2016

To,

Shri Jitendra Nath Sharma
TGT, GSF High School
Gun & Shell Factory
Cossipore

Shri Abhimanyu Singh
TGT, GSF High School
Gun & Shell Factory
Cossipore

Shri Awadesh Kumar Mishra
TGT, GSF High School
Gun & Shell Factory
Cossipore

Through : Sr. General Manager/ GSF

Sub. : Hon'ble CAT Kolkata judgment and order dtd 17/07/2015 passed in MA No. 350/00261/2015, OA No. 350/00951/2015 Jitendra Nath Sharma & Ors. Vs. UOI & Ors.)

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Whereas an Original Application No. OA No. 350/00951/2015 was filed by you before Hon'ble CAT' Kolkata, subsequently supplemented by MA No. 350/00261/2015 for following relief:

01. That the Hon'ble Tribunal be kind to allow this joint applicants representing under Rule 4(5)(a) of the CAT Procedure rules 1987.

02. That the Hon'ble Tribunal be kind to hold that depriving of teaching staffs working under various Ordnance Factories to switchover from erstwhile Chattopadhyay Commission Scheme to MACP scheme, which is discriminatory, unconstitutional and depriving of equal benefit as given to other Civilian employees.

03. That the Hon'ble Tribunal be kind to direct the respondents to allow the benefit of three up-gradations in grade pay of particular pay bands on completion of 10, 20 and 30 years of service under the MACP scheme, with effect from 01.09.2008, to all applications from their respective date of eligibility with financial benefit of back wages.

04. Whereas the Hon'ble CAT' Kolkata has disposed of your above Original Application vide its judgment and order dtd. 17/07/2015. The operative portion of the same is as under:

"In view of the mandate highlighted in the MACP Scheme supra respondent No. 2 is directed to take up the issue urgently with the Government and try to resolve the issue preferably within a period of six months from the date of receipt of a copy of this order"

05. Whereas, as per directive contained above, respondent no. 2 (Chairman, Ordnance Factory Board) have been directed to take up the issue urgently with the Government

and try to resolve the issue preferably within a period of six months from the date of receipt of a copy of the order.

06. In the light of decision of the Hon'ble CAT, Kolkata in the matter, **the matter was taken up by respondent No. 2 (The Chairman, Ordnance Factory Board) with Ministry of Defence vide OFB ID Nos. 340/OA/350/1594/14/AIOFTSA/GSF/286/FE R/NI dated 17-08-2015 and 01/6th CPC/MACPS/Per/Policy dated 08-10-2015.**

07. Accordingly, Ministry of Defence examined the contention of the applicants in the light of facts available on record, as mentioned in the succeeding paragraphs.

08. The National Commission on Teachers under the Chairmanship of Prof. D. P. Chattopadhyaya made various recommendations concerning pay and service conditions of teachers at School level. **Pending Government's decision on the report of National Commission on Teachers, the Fourth Central Pay Commission only recommended the replacement scales for the school teachers.** Accordingly, these pay scales were implemented vide Ministry of Finance (Department of Expenditure) Notifications No. F.15(1)-IC/86 dated 13th September, 1986 and 22nd September, 1986. Subsequently, it was clarified that the revised scales of pay for different grades of teachers are based only on the recommendations of the Fourth Central Pay Commission, that decision on the recommendations of National Commission on Teachers - I is yet to be taken and that it would be done as soon as possible.

09. In partial modification of Finance Ministry's Notifications No. F.15(1)-IC/86 dated 13th September, 1986 and 22nd September, 1986, by which replacement scales were given to school teachers, and in accordance with recommendations of The National Commission

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on Teachers under the Chairmanship of Prof. D. P. Chattopadhyaya, the revised pay scales of school teachers, communicated vide Ministry of HRD No. F.5-180/86-UTI dated 12-08-1987 were made applicable w.e.f. 01-01-1986 in all Union Territories (except Chandigarh) including Government aided schools and organizations like Kendriya Vidyalaya Sangathan and Central Tibetan Schools Administration etc. The said communication contained the conditions for granting senior scale as well as selection scale.

10. In compliance of the directives of the Hon'ble CAT Kolkata judgment and order dtd 17/07/2015 passed in MA No. 350/00261/2015, OA No. 350/00951/2015, and due consideration of aforesaid factors and other facts on record, MoD has issued the following directives vide ID No. 52(6)/2015-D(Estt./NG) dated 03.03.2016:

"The proposal of OFB of extending MACP scheme to OF School Teachers cannot be considered as the decision of extension of scheme to KVS teachers is still pending with Ministry of Finance with whom OFB School Teachers have been seeking parity in the past."

11. Since the revised pay scales of School teachers, communicated vide Ministry of HRD No. F.5-180/86-UTI dated 12-08-1987 were made applicable w.e.f. 01-01-1986 in all Union Territories (except Chandigarh) including Government aided schools and organizations like Kendriya Vidyalaya Sanathan and Central Tibetan Schools Administration etc. and the decision of extension of scheme to KVS teachers is still pending with Ministry of Finance with whom, OFB School Teachers have been seeking parity in the past, Ministry of Defence has decided that the proposal of

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OFB of extending MACP scheme to OF School Teachers cannot be considered.

12. A copy of the MoD letter is being served upon you intimating compliance of the judgment and order of Hon'ble CAT Kolkata in the matter.

Sd/-
(S.K. Singh)
Director / IR
For DGOF & Chairman"

The Respondent has also brought to our notice a copy of the letter dated 12.10.2015 written by the Director/Admn./ (for Director General, Ordnance Factories) Govt. of India, Ministry of Defence, Ordnance Factory Board, Kolkata to the Under Secretary (D-Civ.i), Ministry of Defence, Department of Defence Production, New Delhi. In paragraphs 6 of the aforesaid letter it has been reported as under:

"06. MoD vide I.D.No. 5/(1)/2010-D(Fy.II) dated 08/11/2012, informed about the advice to await till the decision of MoF on a similar proposal of MACPS for KVS being under consideration by them. A copy of the said I.D. is enclosed as Annexure-VIII. In this connection, it may be indicated that the teachers of KVS are not at par with the teachers of OFs so much so that they are controlled by KVS, which is an Autonomous Body whereas, the teachers of OFs are purely Defence Civilian Employees."

Thus, we note that the OFB teachers are seeking parity with teachers of KVS as regards MACP Scheme which has not been extended to KVS teachers also till now.

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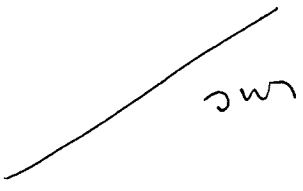
Accordingly, it has been prayed by the Respondent that as the order of this Tribunal has been complied with, this Contempt Petition is liable to be dismissed.

3. Heard both. Consulted the records.

4. The Respondent in the speaking order has made it specifically clear that as the revised pay scales of School teachers, communicated vide Ministry of HRD No. F.5-180/86-UTI dated 12-08-1987 were made applicable w.e.f. 01-01-1986 in all Union Territories (except Chandigarh) including Government aided schools and organizations like Kendriya Vidyalaya Sanathan and Central Tibetan Schools Administration etc. and the decision of extension of scheme to KVS teachers is still pending with Ministry of Finance with whom, OFB School Teachers have been seeking parity in the past, Ministry of Defence has decided that the proposal of OFB of extending MACP scheme to OF School Teachers cannot be considered.

5. Our mind is reminiscent and redolent with the decision of the Hon'ble Apex Court in the case of **Director of Education, Uttaranchal and others v Ved Prakash Joshi and Others**, reported in 2005 Supreme Court Cases (L&S) 812. The relevant portion of the decision is at paragraph 7 which is quoted hereunder for ready reference:

"7. While dealing with an application for contempt, the Court is really concerned with the question whether the earlier decision which has received



its finality had been complied with or not. It would not be permissible for a Court to examine the correctness of the earlier decision which had not been assailed and to take the view different than what was taken in the earlier decision. A similar view was taken in K.G. Derasari and Anr. V. Union of India and Ors. (2001 (10) SCC 496). The Court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the concerned party to approach the higher Court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher Court. The Court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the Court passing the judgment or order. Right or wrong the order has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non-compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside."

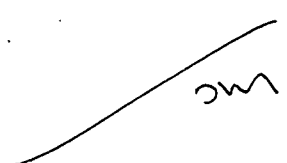
6. Further, the Hon'ble Apex Court in the case of J.S.Parihar v Ganpat Duggar and others reported in AIR 1997 Supreme Court 113 (paragraph 5) held as under:

"5. The question then is: whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr.S.K. Jain, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision take by the

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Government in preparation of the seniority list in the light of the law laid down by three benches, **the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2 (b) of the Act.** Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. **We do not find that the contention is well founded.** It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991. Subsequently promotions came to be made. **The question is: whether seniority list is open to review in the contempt proceedings** to find out, whether it is in conformity with the directions issued by the earlier Benches. **It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum.** The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned single Judge cannot be given to redraw the seniority list. **In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings.** It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench."

7. In view of the order, quoted above, it cannot be said that there was deliberate and wilful violation of the order so as to proceed against the Respondent under the Contempt of Court Act and Rules. This is an application of contempt and in contempt



petition the first and foremost condition is to establish whether the respondent authorities have intentionally and deliberately violated the orders of the Court. Going through the order passed in compliance with the order of this Bench, we do not see any intentional or deliberate violation of the order of this Bench. The Hon'ble Apex Court in the case of **J.S.Parihar v Ganpat Duggar and others (supra)** have clearly held that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The order issued in compliance of the order of the Court may be wrong or may be right or may or may not be in conformity with the directions but that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order as after re-exercising the judicial review in contempt proceedings, a fresh direction cannot be given to pass another order in compliance of the earlier order of this Tribunal.

8. In view of the discussions made above, while dismissing this Contempt Petition, liberty is granted to the Applicant to agitate his grievance, by filing a fresh OA in the appropriate forum, if so desired. There shall be no order as to costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C.Gupta)
Member (Judl.)