

(2023) 04 CAT CK 0063

In the Central Administrative Tribunal

Case No : Civil Contempt Application No. 330, 00121 Of 2018 In Original
Application No. 330, 00101 Of 2018

Pramod Kumar Singh

APPELLANT

Vs

Abhishek Ranjan, Senior Divisional Personnel Officer, North
Central Railway, Allahabad Division, Nawab Yusuf Road,
Allahabad

RESPONDENT

Date of Decision : 28-04-2023

Acts Referred:

Contempt Of Courts Act, 1971 — Section 12

Citation : (2023) 04 CAT CK 0063

Hon'ble Judges : Om Prakash VII, Member (J); Dr. Sanjiv Kumar, Member (A)

Bench : Division Bench

Advocate : A.K. Srivastava, M.K. Srivastava, M.K. Sharma

Judgement

Om Prakash VII, Member (J)

1. The present Contempt Petition is filed against non-compliance of the order dated 24.04.2018 passed in OA No. 330/101/2018. In the aforesaid OA, while disposing the OA, the following directions were given to the respondents:-

"4. In view of the submissions made by the counsel for the parties no useful purpose will be served to keep this O.A. pending and matter can be resolved by giving direction to the respondent No.2/competent authority to decide the pending representation of the applicant. Hence, without commenting anything on the merits of the case as well as on the point of limitation, we disposed of the present O.A. with direction to respondent No.2/Competent Authority to decide the representation dated 30.10.2016 (Annexure A-8) of the applicant considering the observations made in the order dated 25.11.2016 passed in O.A. No.1595 of 2011 (Alok Kumar Srivastava vs. UOI & Ors) by passing a reasoned and speaking order within a period of two months from the date of receipt of a certified copy of this order and communicate the decision to the applicants in writing".

2. Learned counsel for the respondent submitted that in compliance of the order dated 24.04.2018 passed in OA No. 101/2018, the respondent decided the applicant's representation dated 30.10.2016 by a reasoned and speaking order dated 14.09.2018. He further submitted that by the order dated 14.09.2018, the respondent have regularized the services of the applicant w.e.f. the exact date on completion of 3 years of service from the date of their initial appointment and further granted him promotion, seniority and benefits of MACP after approval of the competent authority.

3. In rebuttal, learned counsel for the petitioner submitted that respondent has taken a wrong plea by stating a false statement which is not permissible under the service rules. He further submitted that applicant was promoted and granted Grade Pay of Rs. 4600/- from Rs. 4200/- in which basic pay was placed Rs. 47,600/- from the month of July 2018. Learned counsel further contended that the main ground for filing the contempt petition is with regard to reducing the pay of the petitioner at Rs. 44,900/- from the month of September in place of Rs. 47,600/-.

4. In reply to aforesaid contention of the petitioner, respondents have stated in their counter affidavit that after promotion as CIT in PB 9300-34800/GP Rs. 4600/- w.e.f. 2.2.2018 his pay fixed Rs. 46,200/- w.e.f. 2.2.2018 and pay raised Rs. 47,600/- w.e.f 1.1.2019.

4. We have heard and considered the arguments of learned counsel for the parties and gone through the material on record.

5. The Contempt of Courts Act, 1971 clearly emphasizes that ingredients of willful disobedience must be there before anyone can be charged for contempt of a civil nature. The Hon'ble Apex Court in Dinesh Kumar Gupta v. United India Insurance Company Limited, (2010) 12 SCC 770 has observed that "contempt of a civil nature can be held to have been made out only if there has been a willful disobedience of the order and even though there may be disobedience, yet if the same does not reflect that it has been a conscious and wilful disobedience, a case for contempt cannot be held to have been made out." Similar view had also been taken by the Hon'ble Supreme Court in Ahmad Ali. Vs. Supdt., District Jail, 1986 Supp SCC 556 : AIR 1987 SC 1491 wherein it has been observed that "mere unintentional disobedience is not enough to hold anyone guilty of contempt and although disobedience might have been established, absence of willful disobedience on the part of the contemnor, will not hold him guilty unless the contempt involves a degree of fault or misconduct".

6. The Hon'ble Apex Court in the case of J.S. Parihar Vs. Ganpat Duggar and others AIR 1997 Supreme Court 113 has held that in compliance of the order of the Court, the preparation of the seniority list may be wrong or may be right or may not be in conformity with the directions, but that would be a fresh cause of action to avail of the opportunity of judicial review. It is also held that the same cannot be considered to be the willful 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. It was also held that Learned Single Judge exercising the jurisdiction to consider the matter on merits in contempt proceedings would not be permissible under Section 12 of the Act.

7. In the case of Shail Raj Kishore, Secretary, Education basic, U.P. Lucknow and others 2004 (3) AWC 2444 the Hon'ble court has held as under:-

"If the applicants feel that the order passed by the opposite party is not in accordance to the intent or desire of the Court or otherwise illegal and arbitrary, the same can only be challenged before the appropriate forum. In various cases, Apex Court has held that the Contempt Court cannot go into the merit of the order. Various grounds raised by the learned counsel for the applicant to submit that the order is bad in law required consideration and adjudication, which can only be done by the appropriate Court and not by this Court."

8. From the perusal of aforesaid compliance affidavits, it is evident that respondent are trying to prove their willingness to comply with the order of the Tribunal. Therefore, they have filed compliance affidavit. We have perused the order of the Tribunal dated 24.04.2018 passed in OA No. 101/2018 whereby respondents were directed to decide the representation dated 30.10.2016 (Annexure A-8) of the applicant considering the observations made in the order dated 25.11.2016 passed in O.A. No.1595 of 2011 (Alok Kumar Srivastava vs. UOI & Ors) by passing a reasoned and speaking order. In compliance of direction of the Tribunal, respondent decided the representation of the petitioner by passing a reasoned and speaking order. Hence, we are of the view that the respondents have complied with the order passed by this Tribunal and have fully explained the reasons in their compliance affidavits, as such nothing survive to be adjudicated in the present contempt petition. If the petitioner is not satisfied, it would be a fresh cause of action to avail of the opportunity of judicial review.

11. Considering the above view of the Hon'ble Apex Court and facts and circumstances of the case, we do not find that the respondent has committed any willful disobedience of the order passed by this Tribunal. Accordingly, no prima facie case is made out to proceed with the contempt petition. Notice issued to the respondent stand discharged. However, petitioner is at liberty to file a fresh O.A., if so wishes.