

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.8341/2009**

% **Date of Decision: 12.09.2011**

UOI & Ors. Petitioners

Through Mr. R.V. Sinha, Advocate along with
Sh.Anil Bhandula, Under Secretary for
the Petitioners

Versus

Sh. Chattarsal Sehrawat & Ors. Respondents

Through Rajiv Bajaj, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be
reported in the Digest? | YES |

ANIL KUMAR, J.

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1. The petitioners have challenged the order dated 27th January, 2009 passed in CP No. 456/2008 in OA No. 73/2004 discharging the contempt notice and affording another opportunity to the petitioners to implement the order dated 29th November, 2004 passed in OA No.73/2004, wherein the petitioners were directed to reckon the

training period as eligible period for the benefits under ACP Scheme and to pass a speaking and reasoned order within a period of three months. The order of the Tribunal has primarily been challenged on behalf of the petitioners on the grounds, which were enumerated by the learned counsel for the petitioners, Mr. Sinha, during the arguments on 5th September, 2011. The pleas raised on behalf of the petitioners are as under:-

- (i) The Tribunal erred in taking cognizance and initiating the contempt for non-compliance of the order dated 24th November, 2004, which was four years old in view of Section 20 of the Contempt of Courts Act.
- (ii) Correctness of implementation of the said order or otherwise cannot be considered and re-agitated in contempt proceedings, if at all, as this amounts to fresh cause of action and the person aggrieved has other cause of action.
- (iii) The Department has implemented the aforesaid order in terms of policy vide letter dated 11th December, 2007, (page 89), and if at all, the respondents were aggrieved, the cause of action for them was to file a fresh petition not the contempt petition.

2. Brief facts to comprehend the disputes are that the respondents had filed an original application seeking the quashing of the order dated 25th August, 2003 as well as a declaration that the action of the petitioners in denying the arrears of pay to the respondents is illegal and arbitrary and to further direct the petitioners to treat the revised dates of holding the each grade as the

actual date of holding the each grade for all purposes and consequently to grant the benefits under the Assured Career Progression Scheme (ACP Scheme) along with the actual arrears which had been denied in pursuance of the order dated 25th August, 2003.

3. The respondents had earlier approached the Central Administrative Tribunal in OA No. 528/1993, seeking quashing of the seniority list and had claimed reckoning of period of training as Trainees (Type-B) for purpose of seniority and other consequential benefits, which was disposed of by the Tribunal by an order dated 15th February, 1999. The Tribunal, in its order dated 15th February, 1999, had held as under:-

“ We, therefore, hold that the respondents shall consider the period of training also in reckoning seniority. We further direct the respondents to apply such of the principles as would be suitable to the respondents-department from the orders of the Ministry of Personnel & Training in OM No. 22011/7/86-Estt. (D) dated 3.7.1986, to be found in Swamy's Complete Manual on “Establishment and Administration” for Central Government Offices. Fifth Edition-1996 at page 494 onwards. The Ministry of Personnel had spelt out with illustrations as to how to work out the seniority of direct recruits and promotees. The respondents shall carefully consider and redefine the principle on which seniority be based between the applicants and the promotees. After laying down the principle, a draft seniority list be circulated giving three weeks time to the contending groups to state their objections and thereafter finalise the seniority list. The whole exercise

should be completed within a period of six months from the date of receipt of a copy of this order. The O.A. is disposed of with the above directions. No costs.”

4. Since the seniority had been granted to the respondents, they further sought arrears as a consequence of the seniority and ante-dating of their promotion and also sought that the ante-dated promotion be treated as deemed date for qualifying the trade test. For the Assured Career Progression, it was contended that since, the seniority was accorded after taking into consideration the period of training, the said period should also be reckoned as eligibility period for grant of upgradation under the ACP Scheme.

5. The Tribunal disposed of the subsequent Original Application No. 73/2004, which had been filed by the respondents for arrears as well as reckoning the period of training as eligible period for the purpose of ACP by the order dated 29th November, 2004. Since, in the earlier OA No. 528/1993, wherein seniority was directed to be ante-dated taking into consideration the period of training, however, the relief regarding arrears on account of this was not specifically directed, therefore, the Tribunal construed this to be a refusal to grant the same and, therefore, declined to grant the arrears of pay

and also declined to set aside the order dated 25th August, 2003, by applying the doctrine of constructive *res judicata*.

6. However, in respect of the prayer of the respondents that the period of training be also reckoned for the purpose of computing the period for grant of benefit under the ACP Scheme, the Tribunal categorically held in OA No. 73/2004 by the order dated 29th November, 2004 that the period of training has to be reckoned as the eligibility period for purpose for grant of benefits of ACP and, therefore, directed the petitioners to consider the claim of the respondents in accordance with the rules and instructions and reckon the training period as the eligibility period for grant of benefits under the ACP scheme. The relevant paragraphs 11 & 12 of the said order dated 29th November, 2004, are as under:-

“11. If one has regard to the above, in so far as relief of consequential benefits of reckoning training period towards seniority, there is no specific direction issued by the Tribunal. It is an admitted fact that the applicants had sought the said relief in the earlier OA 528/1993. Having not granted the said relief, the same is deemed to be refused to the applicants and on the same cause of action, the present proceedings are barred by the principle of *res judicata*. However, in so far as grant of benefit under ACP Scheme is concerned, reckoning the aforesaid period towards eligibility as claimed in para 8 (iii) of the OA, as the ACP Scheme had come into being on 9.8.1999 whereas the order passed by the Tribunal in OA 528/1993 was on 15.2.1999, Tribunal could not have foreseen the promulgation of ACP, which is a subsequent event. Accordingly, this part of the relief

would not be constituted as a consequential relief. Accordingly, once the respondents have treated the training period towards the eligibility and for the purposes of seniority as well in the light of the stand taken in the counter reply, **the aforesaid period has to be reckoned as an eligibility period for grant of benefits of ACP.**

12. In this view of the matter, though relief claimed in para 8(i) and (ii) are barred by res judicata, we partly allow this OA by directing the respondents to consider the claim of the applicants for grant of the benefits under the ACP Scheme as per the their eligibility in accordance with rules and instructions **by reckoning the training period towards eligibility.** If the applicants are entitled and due for the benefit under the ACP Scheme, the same would be accorded to them with all arrears etc. within a period of three months from the date of receipt of a copy of this order. No costs.”

7. Pursuant to the order dated 29th November, 2004, the petitioners passed the order No. 06/37-G-9 dated 11th December, 2007 granting the first financial upgradation under the ACP Scheme w.e.f. the dates as shown in the said order. However, in the said order, while granting the benefits under the ACP Scheme, the period of training was not reckoned for the purpose of granting the benefits under the ACP Scheme as directed by the Tribunal in its order dated 29th November, 2004.

8. The order dated 29th November, 2004, directing the petitioners to reckon the training period as an eligibility period for grant of

benefits under the ACP Scheme had not been challenged by the petitioners. Consequently, when the order dated 11th December, 2007 was issued, granting the benefits under the ACP Scheme w.e.f. the date stipulated therein, without reckoning the training period, and since the order dated 29th November, 2004 passed in OA No. 73/2004 had attained finality, the respondents had submitted a representation dated 12th February, 2008 to the petitioners seeking the implementation of the Tribunal's order dated 29th November, 2004. It was also contended that while granting ACP scheme by OM dated 11.12.2007, the order of the Tribunal dated 29th November, 2004 has not been implemented as the period of training as eligibility period had not been reckoned while awarding the benefits under the ACP scheme. Reminders were also sent to the petitioners to implement the order dated 29th November, 2004, while granting the benefits under the ACP Scheme, i.e., to reckon the training period which was also considered for the purposes of according seniority to the respondents. The petitioners, rather, declined to take into consideration the deemed date, i.e., the date after taking into consideration the training period, for the purpose of the benefits under the ACP Scheme and sent a communication stipulating the same by the letter dated 2nd September, 2008. It was stipulated in the communication dated 2nd September, 2008 that the 12 years'

period of the respondents had to be calculated as per the date on which Grade-II was granted, as recorded in their service books, and also from the date the salary of Grade-II, (4500-7000) was being drawn, from the same recorded date of Grade II as per the Service Books. It was contended that it is not to be from the deemed date for the respondents but the actual date of promotion for them. That aggrieved by the actions of the petitioners, not to take into consideration the deemed date of promotion, as per the order dated 29th November, 2004 passed in OA 73/2004, a legal notice dated 1st November, 2008 was given on behalf of the respondents to the petitioners. Despite the reminders and legal notice, the order passed by the petitioners were not complied with.

9. The respondents, thereafter, filed the contempt petition being CP No. 456/2008 in OA No. 73/2004 contending that since the compliance of the order dated 29th November, 2004 was categorically declined in the letter dated 2nd September, 2008, therefore, the contempt petition is filed within the period of limitation on 24th November, 2008 for willfully disobeying the direction of the Tribunal and thereby committing the contempt of Court. The respondents sought initiation of contempt proceedings and a direction to grant the benefits of ACP Scheme to the respondents after taking into

account the training period as an eligibility period for ACP scheme in terms of the directions given by the Tribunal in its order dated 29th November, 2004, which had not been challenged and which therefore, had become final.

10. In the contempt petition, the respondents urged that in view of the findings of the Tribunal in OA No. 73/2004 decided by the order dated 29th November, 2004, holding that the training period has to be reckoned as an eligibility period for the grant of benefit under the ACP Scheme and, therefore, the petitioners could not deny the same on any ground. The respondents further contended that rather, the office of the petitioners at Dehradun, by the letter dated 4th March, 2005, had sent the case of the respondents in the office of petitioner No. 1 for the approval of the recommendation in consonance with the order of the Tribunal that the two years training period be counted towards eligibility period for grant of benefits under the ACP Scheme. In the letter dated 4th March, 2005 on behalf of the Surveyor General of India, it was categorically stated that the Tribunal had asked to reckon the two years training period towards eligibility.

11. The relevant paragraph of the communication dated 4th March, 2005 is as under:--

“ **As Hon’ble Tribunal has asked to count the 2 years training period towards eligibility** and this office is also of this opinion that Direct Recruit Division II Gde.II should be given ACP scheme benefits should be given after **12/24 years of service from the deemed date of appointment** as Grade II but actual benefits can only be given w.e.f. 9.8.1999 the date from which the ACP scheme is implemented where as till now the ACP benefits are being allowed from the actual date of appointment as Grade II.”

12. In the reply to the letter dated 4th March, 2005, on behalf of the Surveyor General, it was stated that the appointment of the respondents as Gr.-II is pre-poned after taking into account the training period as eligibility period in terms of ACP Scheme. However, despite the order of the Tribunal dated 29th November, 2004 to grant of ACP Scheme by reckoning the training periods towards eligibility within a period of three months, it was not done, rather, the respondents were conveyed by the letter dated 4th July, 2005 that the matter of granting ACP to Division II staff is being taken up with the Committee of Secretaries and the order dated 29th November, 2004 would be implemented as soon as the matter of giving benefits of ACPs to the Division II employees is resolved by the Committee of Secretaries. Ultimately the Committee of Secretaries approved the grant of the benefits of the ACP Scheme to Division-II (Gr.II) and Division-I (Promotee from Division-II) employees of Survey

of India from the date of introduction of the ACP Scheme, i.e., from 9th August, 1999, which was communicated on behalf of the Govt. of India to the Surveyor General of India by the letter dated 16th November, 2007. The respondent further disclosed in the contempt petition that the order dated 27th November, 2007, was passed for grant of ACP Scheme to Division II, Grade II, w.e.f. 9th August, 1999, however, it was not clarified whether the ACP Scheme would be implemented in compliance with the order dated 29th November, 2004 directing the petitioners to reckon the training periods as an eligibility period for grant of benefit under the ACP scheme.

13. The respondents categorically stated that pre-ponement of training period of two years had already been accepted and recorded in the service books of all the respondents with the fixation of the corresponding pay scale of Rs.4500-7000 in Gr. II, however, in the Office Order dated 11th December, 2007 granting the benefits under ACP Scheme, the order of the Tribunal dated 29th November, 2004 was not given effect to.

14. The respondents, therefore, had submitted a representation dated 12th February, 2008 and also sent the reminders. The petitioners, however, by communication dated 2nd September, 2008,

refused to take into consideration the training period in reckoning the eligibility period for grant of benefits of ACP Scheme. In the order dated 2nd September, 2008, it was held that the first financial upgradation should be as per the actual date of placing the respondents in Gr.II and not as per the deemed date of Gr.II after reckoning the two year training period as an eligibility period. The respondents, thereafter, issued a legal notice on 1st November, 2008 and sought implementation of judgment dated 29th November, 2004. The respondents categorically contended that the contempt had been committed when the letter dated 2nd September, 2008 had been issued, declining the deemed date reckoning the period of training and instead allowing only from the actual date of placing the respondents in the Gr.II for the grant of benefits under the ACP Scheme. The respondents, therefore, filed the contempt petition on 24th November, 2008. In the contempt petition, the respondents impleaded Dr. T. Ramaswami, Secretary, Ministry of Science and Technology as he was looking after the charge of Surveyor General of India. The respondents also impleaded Sh. R.K. Nim, Director, of Western Printing Group.

15. In the reply to the contempt petition, the petitioners contended that they could neither challenge the order of the Tribunal on the

ground of ineligibility of Division II employees nor implement the order because the matter of giving the benefits of further two additional financial upgradations in the scale of Rs.5000-8000 and Rs.6500-10500 respectively, over and above three distinct time bound lateral advancement in the scales of Rs.3200-4900, Rs.4000-6000 & Rs.4500-7000 after specified intervals of time to Division II employees was under consideration of Committee of Secretaries. The petitioners, however, did not contend that the petitioners had not been directed to reckon the period of training also as an eligibility period for grant of benefit of ACP Scheme. Rather, it was asserted that an OM dated 26th November, 2008 has been issued by the Director, Govt. of India, Ministry of Science and Technology in compliance with the order of the Tribunal dated 29th November, 2000.

16 Though the order of the Central Administrative Tribunal was specific that period of training be reckoned as an eligibility period for grant of benefit of ACP Scheme, however, in para 9 of OM dated 26th November, 2008, it was held that if induction training does not count towards eligibility service for regular promotion, the same cannot be counted for financial up-gradations under the ACP Scheme. Para-9 of OM dated 26th November, 2008 is as under:-

“9. The Department of Personal and Training (DOP &T) has vide clarification No. 45 of OM No. 35034/1/97-Estt (D) (Vol.IV) dated 18.07.2001 read with their OM dated 10.02.2000, clarified that if under the relevant Recruitment/Service Rules, the induction training counts towards eligibility service for regular promotion; the same will also be counted towards the 12 years/24 years residency period/regular service required for financial upgradations under ACP Scheme. **In other words, if induction training does not count towards eligibility service for regular promotion, the same cannot be counted for financial upgradations under the ACP Scheme.**”

17. Apparently the said OM was not in compliance with the order of the Tribunal dated 29th November, 2004. The Tribunal considered the pleas and contentions of the parties and held that bar of limitation is not attracted since a definite decision not to implement the order reckoning the training period as an eligibility period for grant of benefit of ACP Scheme was taken in the year 2008 and the contempt petition was filed on 24th November, 2008. Thus, the contempt petition is not barred by limitation as had been contended by the petitioners. The Tribunal further held that a contrary and inconsistent stand taken by the petitioners in reply to the contempt petition challenging the order dated 29th November, 2004 should have been taken while challenging the said order and since the order dated 29th November, 2004 had not been challenged it had attained

finality and in the circumstances, it cannot be held that the order of the Tribunal has been complied with. Though, the Tribunal had held that the order of the Tribunal had not been complied with and thus the petitioners had violated the said order, however, instead of taking action for committing contempt of the Court, the Tribunal showed indulgence and instead of punishing the petitioners and to primarily prevent miscarriage of justice by getting the order implemented, granted another opportunity to the petitioners to implement the order dated 29th November, 2004 and to grant the benefits under the ACP Scheme by reckoning the training period as the eligibility period.

18. Para 12 & 13 of the Tribunal's order dated 27th January, 2009 disposing of the contempt petition and discharging the contempt notice are as under:-

“12. While taking cognizance of this issue, a specific finding of the Tribunal and on the basis of averments in the counter reply in the OA that the period of training has to be treated as eligibility period for grant of benefit of ACP and a direction consequent upon it to consider this eligibility to be reckoned towards the grant of ACP as per rules and instructions is a referral to the rules and instructions on ACP, i.e., scheme of ACP and conditions laid down therein, which stipulate that regular service has to be reckoned for the purpose of grant of financial upgradation under ACP.

13. Now a stand taken by the respondents is that this training period can be treated as training but the regular

service has to be treated from the date the applicants have moved to Grade II is clearly a contradictory stand and inconsistent plea taken by them over and above the plea taken by the Tribunal in OA. If this is the stand of the respondents, it would have been propagated before the Tribunal and if a contrary view has been recorded by the Tribunal, certainly non-approach to the High Court in appeal and attainment of finality of the directions would not leave any scope to the respondents to act otherwise by treating this service as training and not regular service. However, as earlier said, our prime concern is that the directions are implemented in true letter and spirit but this is a case where over and above the directions of the Tribunal, the respondents have passed an order without preferring an appeal, which cannot be countenanced in law. By way of sheer indulgence, as we are not insisting in punishing the respondents but primarily to prevent miscarriage of justice to get our directions implemented, we accord another opportunity to the respondents to count the period of training period towards regular service under ACP scheme and further to accord benefits to the applicants by passing a speaking and reasoned order within a period of two months from the date of receipt of a copy of this order.”

19. That aggrieved by the order dated 27th January, 2009 discharging the contempt notice against the petitioners, and giving them another opportunity to implement the order dated 29th November, 2004, the petitioners have filed the above noted petition. The order dated 27th January, 2009, discharging the contempt notice and giving another opportunity to the petitioners to comply with the

order dated 29th November, 2004 was stayed by this Court by the order dated 28th April, 2009.

20. During the pendency of the present petition, the respondents also filed a CM No. 9143/2011 seeking stay of recovery proceedings initiated by the petitioners against them. By order dated 16th August, 2011, the application of the respondents was disposed of and the order of recovery dated 3rd February, 2011 issued by the department vide letter No. C-733/1902-MACP (WPG) was stayed during the pendency of the present petition.

21. During the pendency of the present petition, on 5th September, 2011, the learned counsel for the petitioners had crystallized his pleas and contentions, which are also reproduced hereinabove contending, *inter alia*, that the contempt petition is barred in view of Section 20 of Contempt of Courts Act, 1971; the correctness of implementation of the order dated 29th November, 2004 could not be gone into by the Tribunal and if the respondents were aggrieved by the course of action adopted by the petitioners, then that would be a fresh cause of action and thus a fresh original application should have been filed and not the contempt petition. The learned counsel had also contended that for the purpose of limitation under Section

20, the period of one year should have been computed from 29th November, 2004, when the order was passed in OA No.73/2004 holding that the respondents are entitled for reckoning of their training period as an eligibility period for the purpose of ACP Scheme. The learned counsel Mr. Sinha had also contended that the order dated 29th November, 2004 was complied with while granting ACP by office order dated 11th December, 2007.

22. During the arguments Mr. Anil Bhandula, Under Secretary, who was present on 5th September, 2011, refuted the pleas raised by his counsel that while passing the order dated 11th December, 2007, the order of the Tribunal dated 29th November, 2004, reckoning the period of training was complied with. According to him the order of the Tribunal dated 29th November, 2004, was not complied with till the order dated 26th November, 2008 was passed by Mr. Neeraj Kela, Director.

23. However, Mr. Sinha, learned counsel, insisted that the order dated 29th November, 2004 was complied with while granting ACP Scheme by the order dated 11th December, 2007 and in order to substantiate his plea he referred to paragraphs 4 & 5 of the reply. On perusal of para 4 & 5 of the reply, it rather transpired that it

dealt with letter dated 27th November, 2007 stipulating that ACP Scheme may be accorded in accordance with the directions issued under the office letter No. C-4500/1902/ACP/6th November, 2003. Confronted with this situation, Mr. Sinha, changed his stand and stated that he stood corrected and the stand taken by the Under Secretary, Mr. Bhandula is correct and order dated 29th November, 2004 was implemented by order dated 26th November, 2008 and not by order No. 6/37-G-9 dated 11th December, 2007. This contrary stand taken by the learned counsel for the petitioners is reflected in the order passed by this Court on 5th September, 2011.

24. The learned counsel for the petitioner very emphatically contended that the contempt petition was barred by limitation. The learned counsel, however, has not been able to give any logical answer as to how the petition is barred by limitation under Section 21 of the Administrative Tribunal's Act, 1985. The learned counsel is also unable to produce any precedent, which would show that the cause for filing the contempt petition will arise from the date the Tribunal's order which was passed on 29th November, 2004 and not from the date the petitioners declined to comply with the said order.

25. From the documents on record, it is apparent that prior to 2nd September, 2008, it was represented to the respondents that the order is being implemented and even the recommendations were made to reckon the period of training as eligible period for grant of ACP Scheme. It was for the first time, on 2nd September, 2008, that the petitioners had declined to reckon the training period as an eligible period for the purpose of grant of ACP Scheme. The cause of action for filing the contempt, i.e., willful and contumacious violation of the order, arose only on the date it was declined to be implemented, which is 2nd September, 2008 in the facts and circumstances or 26th November, 2008 when office memorandum SM/04/011/2004 was passed holding that if induction training does not count towards eligibility service for regular promotion, the same cannot be counted for financial upgradation under the ACP Scheme which order was in direct violation of the order dated 29th November, 2004. The plea of the learned counsel for the petitioners, Mr. Sinha, that if the order declining to implement the order dated 29th November, 2004 was passed after the contempt petition was filed on 24th November, 2008 then, it will not save limitation is also without any rationale. If during the pendency of the contempt petition, another order declining the compliance of order is passed after declining to pass it earlier, then subsequent order will not make the

contempt petition not maintainable. This learned counsel for the petitioners is unable to give any rational justification for submission made by him. Taking it from another view point, it cannot be refuted that twice in the year, 2008 and not before that year, the petitioners have declined to reckon the training period as eligible period for the purpose of granting ACP Scheme. Therefore, the contempt petition is not barred by limitation as has already been held by the Tribunal and this Court does not find any error in the findings of the Tribunal in this regard nor any cogent ground has been made out by the learned counsel for the petitioners to substantiate that the contempt petition was barred by limitation as provided under the Administrative Tribunal Act, 1985.

26. The next contention of the petitioners is that the order dated 26th November, 2008 passed by the petitioner gives a fresh cause of action and a new original application should have been filed by the respondents, instead of the contempt petition. The learned counsel has relied on (2002) 5 SCC 352, Jhaneshwar Prasad Paul and Another Vs. Tarak Nath Ganguly & Ors; (2007) 15 SCC 683, UOI & Anr. Vs. P.M. Rangaswami; 1996 (6) SCC 291, JA Parihar Vs. Ganpat Duggar & Ors; 2007 (1) SLR 864, State of Haryana & Ors. Vs. MP Mohla in support of his this plea.

27. In P. M. Rangaswamy (Supra) the Central Administrative Tribunal, Madras Bench had held some of the officials guilty of contempt holding that its order dated 30th April, 2004 was not complied with deliberately which amounted to contempt. In the Supreme Court, it was noted that there was no direction for promotion and the direction was given only for consideration and, therefore, there was no question of another automatic promotion. The Tribunal in the instant case cited by the petitioners had not held that the respondent was entitled to promotion notwithstanding losing his seniority. It also appeared from the record that despite losing seniority, the respondent was considered for promotion to HAG on the basis of Tribunal's order. Since, there were no categorical directions for promotion of the respondent, the Supreme Court had held that the Tribunal was not justified in holding that the contempt had been committed. Even if after being considered for promotion, the respondent was not promoted and, therefore, if he had any grievance, it was open to him to assail the same in appropriate proceedings. However, the facts of the present matter in contradistinction to the case relied on by the petitioners are distinguishable as the Tribunal in its order dated 29th November, 2004 had categorically held that the period of training has to be

reckoned as an eligibility period for the purpose of grant of benefits of ACP to the respondents. The Tribunal had not held or directed the petitioners to consider whether the respondents are entitled for reckoning the period of training towards the eligibility for ACP or not. Apparently, the case relied on by the petitioners does not support their contention.

28. In *Jhareswar Prasad Paul and Anr. (supra)*, the Supreme Court had held that the Court cannot, in the guise of exercising contempt jurisdiction, grant substantive relief not covered by the order/judgment which is the subject of the Court proceedings in the contempt jurisdiction. The Court has to rather see whether any disobedience of court's judgment or order has been made out and not what the judgment or order should have contained. If there is any ambiguity in the order/judgment, the Court should direct the parties to approach the Court, which had passed the same. In the instant case, relied on by the petitioners, the Court while exercising contempt jurisdiction had granted a substantive relief, which was not covered by the initial judgment/order, which the Court could not do in the summary contempt proceedings. In the judgment against which contempt proceedings were initiated, no direction was issued by the High Court that the writ petitioners will be admitted to the

cadre of Upper Division Clerks/Assistants in the Directorate, who had all along been holding the posts of Clerk-cum-Cash Collector, which were ex-cadre posts. Entry of such persons into the cadre of Upper Division Clerks/Assistants had to be considered taking into account various aspects of the matter. The dispute whether benefits under the Govt. order could be extended to the writ petitioners also was different from their entry into the existing cadre of Office Assistants and such a dispute could only be determined on consideration of all relevant aspects of the matter and could not be ordered in the summary proceedings for taking action for contempt of Court. The Supreme Court had held that if the High Court felt that the grievance of the writ petitioners relating to the question of their entry into the cadre of Upper Division Clerks/Assistants had not been dealt with by the Court and specific directions had not been issued while disposing of the writ petitions/appeals, then the appropriate course was to leave it to the parties to agitate the matter before the Competent Forum. In contradistinction, in the case of the respondents, the Tribunal in earlier OA No.528/1993, wherein quashing of seniority list was claimed and direction to reckon period of training as Trainee Type-B was prayed for, the Tribunal had categorically held that the period of training shall also be reckoned in considering the seniority. In the subsequent original application, the

OA No. 73/2004 filed by the respondents, sought reckoning of their seniority for the purpose of ACP as by the time the order dated 15th February, 1999 was passed, the ACP Scheme had not come into effect as it had come into being only on 9th August, 1999 it was categorically held that the period of training shall be reckoned as an eligibility period for grant of benefit of ACP Scheme. No fresh direction or substantive relief was given by the Tribunal in the contempt proceedings. Rather it had been noted that the order dated 29th November, 2004 was not even challenged by the petitioners and has consequently attained finality. Consequently, on the basis of the precedent relied on by the petitioners, the order impugned by the petitioners dated 27th January, 2009, whereby as an indulgence another opportunity was granted to the petitioners to comply with the order dated 29th November, 2004 and the contempt notice was discharged cannot be held to be vitiated.

29. The learned counsel for the petitioners have also relied on M.P. Mohla (supra), wherein the Supreme Court had held that if a subsequent cause of action arises in the matter of implementation of a judgment, a fresh writ petition may be filed as a fresh cause of action arises. It was further held that a judgment must be read in its entirety and what would be the effect of a judgment must be

considered from the reliefs claimed in the writ petition as also the implications thereof which has to be deciphered from reading the entire judgment. This cannot be disputed that one of the cause of actions in respect of the order dated 29th November, 2004, had arisen when the ACP Scheme came into being on 9th August, 1999 and while granting the benefit under the ACP Scheme the training period was not reckoned. The Tribunal considering the entire facts and circumstances passed a categorical order to reckon the period of training as an eligibility period for grant of benefit of ACP Scheme. The respondents are entitled for reckoning of training period as the eligibility period for grant of benefit of ACP was reiterated in the impugned order dated 27th January, 2009 passed in the contempt petition and though the petitioners had not complied with the order dated 29th November, 2004, however, as an indulgence another opportunity was granted and the contempt notice was discharged. In the circumstances, it cannot be held that a new cause of action had arisen after the order dated 29th November, 2004 was passed in the case of the respondents. The case relied on by the petitioner's counsel is apparently distinguishable.

30. Similarly, J.S. Parihar (*supra*) is also distinguishable inasmuch as in that case a seniority list was prepared on 2nd July, 1991 and

subsequently promotions came to be made. The question which arose for consideration was whether the 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 was held that promotion in consonance with the seniority list was a fresh cause of action and the aggrieved party could avail the opportunity of judicial review by filing independent application and not in the contempt proceedings, as a fresh direction could not be given to redraw a seniority list in the contempt petitioner. Consequently, none of the precedents relied on by the counsel for the petitioners support the pleas and contentions raised by the petitioners.

31. The order directing the petitioners to reckon the period of training as a period for grant of ACP Scheme was passed on 29th November, 2004 which has not been challenged. Rather, an order dated 26th November, 2008 was passed pursuant to the said order where the petitioners declined to comply with the order on the ground that if induction training period does not count towards eligibility service for regular promotion, the same could not be counted for financial upgradation under the ACP Scheme. This observation in the order dated 26th November, 2008 was contrary to the directions given by the Tribunal in the order dated 29th

November, 2004 and, therefore, while adjudicating the contempt petition, the Tribunal had held that the order of the petitioners cannot be countenanced in law. However, on account of sheer indulgence given by the Tribunal, the contempt notice was discharged and the petitioners were given another opportunity to comply with the order dated 29th November, 2004 to grant the benefits of ACP Scheme to the respondent by reckoning the training period as an eligibility period for the purpose of ACP.

32. If the petitioners were aggrieved by the order dated 29th November, 2004 they should have challenged that by impugning in appropriate manner. Surprisingly, till this date, the order dated 29th November, 2004, has not been challenged. If the training period could not be reckoned for grant of ACP, since induction training period does not count towards eligibility service for regular promotion as has been held in the petitioners' OM dated 26th November, 2008, it was incumbent upon the petitioners to have challenged the order dated 29th November, 2004. The plea of the petitioners in this regard therefore, cannot be accepted.

33. The plea of the petitioners that the Court exercising Contempt jurisdiction cannot go into correctness of implementation of the order

passed alleging that the order has been complied with or not, cannot be accepted. If the alleged compliance order itself states and reflect that the order has not been complied with, the respondents cannot be directed to file an original application challenging the order passed in alleged compliance of Court's substantive order. The substantive order in the Original Application of the respondents was to reckon the period of training for ACP and the alleged compliance OM dated 26th November, 2008 states that the period of training cannot be reckoned for grant of ACP. Then such an OM will not obliterate the substantive order of the Tribunal and the respondents will not be liable to challenge it again.

34. In the totality of the facts and circumstances and for the foregoing reasons, we do not find any merit in the writ petition. There is no illegality, irregularity or perversity in the order dated 27th January, 2009 discharging the contempt notice and by way of indulgence granting another opportunity to the petitioners to comply with the order dated 29th November, 2004. No interference is required in the facts and circumstances in exercise of jurisdiction under Article 226 of the Constitution of India by this Court.

35. The writ petition is, therefore, dismissed. Interim order dated 28.04.2009 is vacated and all the pending applications are also disposed of. Considering the facts and circumstances, the petitioners will also be liable to pay a cost of Rs.25,000/- to the respondents. Cost be paid within four weeks. The interim order dated 28th April, 2009 staying the operation of the order dated 27th January, 2009 in C.P No. 456 of 2008 in O.A No. 73/2004 is vacated and the petitioners are directed to comply with the order of the Tribunal within four weeks. The respondents will also be entitled to avail whatsoever remedies are available to them against the order of recovery dated 3rd February, 2011 issued by Department vide letter No. C-733/1902-MACP (WPG), as the claim of the respondents has not been adjudicated on merit and recovery pursuant to said letter of the Department was stayed only as an interim measure during the pendency of the writ petition.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

September 12, 2011.

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