

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

Con.Case(C).No. 623 of 2009 (S)

AGAINST JUDGMENT DATED 07-11-2008 IN WP(C) 30788/2006
.....

PETITIONER(S)/1ST PETITIONER:

**A.VENKITACHALAM, AGED 60,
S/O.LATE V. ANANTHA SUBRAMANIA IYER, RETIRED
ASSISTANT GENERAL MANAGER, OFFICE OF THE CGMT
KERALA CIRCLE, THIRUVANANTHAPURAM, RESIDING AT
T.C.28/2655, CHETTIKULANGARA, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.S.VISHNU**

RESPONDENT(S)/RESPONDENTS 2 & 3:

- 1. SHRI.KULDEEP GOYAL, AGED (NOT KNOWN TO
THE PETITIONER), S/O.(NOT KNOWN TO THE PETITIONER),
THE CHAIRMAN CUM MANAGING DIRECTOR, BHARAT
SANCHAR NIGAM LTD., SANCHAR BHAVAN, NEW DELHI.**
- 2. SHRI.K.S.SRINIVASAN, AGED (NOT KNOWN TO
THE PETITIONER), S/O.(NOT KNOWN TO THE PETITIONER),
THE CHIEF GENERAL MANAGER, TELECOM, BSNL,
KERALA CIRCLE, TRIVANDRUM.**

*** ADDITIONAL R3 IMPEADED.**

- 3. SHRI.M.S.S.RAO, CHIEF GENERAL MANAGER,
TELECOM, BHARAT SANCHAR NIGAM LTD.,
KERALA CIRCLE, P.M.H. JUNCTION,
THIRUVANANTHAPURAM - 695 033.**

*** IS IMPEADED AS ADDITIONAL R3 VIDE ORDER
DTD.31.3.2014 IN IA.97/2014.**

R1 & R2 BY ADV. SRI.MATHEWS K.PHILIP, SC

**THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY
HEARD ON 12-12-2014, ALONG WITH COC. 671/2009 & COC. 836/2010,
THE COURT ON 02-02-2015, DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' ANNEXURES:

ANNEXURE A1: TRUE COPY OF THE JUDGMENT IN WP(C) NO.30788/2006 OF THIS HON'BLE COURT.

ANNEXURE A2: TRUE COPY OF THE JUDGMENT IN WP(C) NO.3807/2005 OF THIS HONOURABLE COURT.

ANNEXURE A3: TRUE COPY OF THE MEMORANDUM NO.232-32/87 STG II DTD.17.5.1991 ISSUED BY THE 1ST RESPONDENT.

ANNEXURE A4: TRUE COPY OF THE ORDER NO.15-28/2003-STG.II DTD.19.5.2008 ISSUED BY THE RESPONDENT.

ANNEXURE A5: TRUE COPY OF THE ORDER NO.15-6/2007-STG.II (i) DTD.21.5.2008 ISSUED BY THE RESPONDENT.

ANNEXURE A6: TRUE COPY OF THE COMMUNICATION NO.STAFF/2801/XVI/131 DTD.6/8.4.2009 ISSUED BY THE CGMT, HP CIRCLE.

ANNEXURE A7: TRUE COPY OF THE COMMUNICATION NO.STAFF/S-2805/TBP/BES/VOL.I/61 DTD.16.5.2009 ISSUED BY THE CGMT, HP CIRCLE.

I.A.NO.441/2009 IN COC.623/2009

ANNEXURE A1: TRUE COPY OF THE JUDGMENT IN CONTEMPT CASE © NO.623/2009 DTD.14.7.2009 OF THIS HON'BLE COURT.

I.A.NO.583/2009 IN COC.623/2009

ANNEXURE A1: TRUE COPY OF THE ORDER NO.ST-III/3-25(R)/2009 DTD.26.9.2009 ISSUED BY THE DEPUTY GENERAL MANAGER, C/O.CGMT, BSNL, THIRUVANANTHAPURAM.

ANNEXURE A2: TRUE COPY OF THE ORDER NO.ST-III/3-25 ©/2009 DTD.26.9.2009 ISSUED BY THE DEPUTY GENERAL MANAGER, C/O.CGMT, BSNL, THIRUVANANTHAPURAM.

ANNEXURE A3: TRUE COPY OF THE REPRESENTATION DTD.5.10.2009 SUBMITTED BY S.VIKRAMAN NAIR, 2ND PETITIONER IN WP(C) NO.30788/2006.

AFFIDAVIT A5 TO A7 REPLY AFFIDAVIT IN 7.9.2011.

ANNEXURE A5: TRUE COPY OF THE ORDER NO.ST-III/3-25(R)/2009 DTD.26.9.2009 ISSUED BY THE DEPUTY GENERAL MANAGER, O/O. CGMT, BSNL, THIRUVANANTHAPURAM.

ANNEXURE A6: TRUE COPY OF THE DOT LETTER NO.12-36/97-STG-1 DTD.28.8.1997 (RELEVANT PORTION).

Msv/

Con.Case(C).No. 623 of 2009 (S)

**ANNEXURE A7: TRUE COPY OF THE ORDER DTD.4.10.2010 IN SLP NOS.1467-1468 OF
2010 OF THE HON'BLE SUPREME COURT.**

RESPONDENT(S)' ANNEXURES:

EXT.R1(a): TRUE COPY OF THE ORDER ISSUED DTD.23.9.2010.

EXT.R1(b): TRUE COPY OF THE ORDER ISSUED DTD.25.9.2010.

**EXT. R2(a): TRUE COPY OF THE ORDER IN CIVIL APPEAL 4389/2010 DATED 20.7.2011
OF HONOURABLE SUPREME COURT OF INDIA.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

**ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.**

Cont.Case Nos.623 & 671 of 2009
and 836 of 2010

Dated this the 2nd day of February 2015

J U D G M E N T

Shaffique,J

These contempt cases have been filed by the petitioners in W.P.C.No.30788/2006, W.P.C.No.3807/2005, and W.P.C.No.20661/2009 complaining about non-compliance of the directions issued in these cases.

2. W.P.C.No.3807/2005 was decided by a Division Bench of this Court on 07/11/2008 and W.P.C.No.30788/2006 and W.P.C.No.20661/2009 were decided based on the judgment in W.P.C.No.3807/2005 inter alia observing that the point raised by the petitioners was covered by the judgment in W.P.C.No.3807/2005. Hence these contempt cases are heard and decided together.

3. By the aforesaid judgments, this Court directed that the order passed by the Central Administrative Tribunal

in O.A.No. 603/1988 and 605/1988 shall stand restored and directed consequential benefits to be given to the petitioners.

4. It is alleged that non-compliance of said direction is wilful and deliberate and amounts to wilful contempt of court.

5. The facts involved in these cases are as follows:

O.A.No.603/1988 and O.A.No.605/1988 were filed by the petitioners before the Central Administrative Tribunal (CAT) claiming that the promotion of the petitioners as Assistant Engineer (AE) should be regulated on the basis of the date of passing the examination and should not be regulated on the basis of seniority in the basic cadre. A common order dated 30/03/1990 was passed by CAT, the operative portion of which reads as follows:

“6. In the conspectus of facts and circumstances, we allow both those applications in OA K-603/88 and OA K-605/88 and direct the respondents to promote the applicants in both the cases with effect from the dates prior to the dates of promotion of any Junior Engineer to Telecom Engineering Group 'B' Service who passed

the Departmental Qualifying Examination subsequent to the passing of the examination by the applicants (1977 in the case of the applicant in OA K-605/88 and 1978 in the case of the applicant in OA K-603/88) and to adjust their seniority accordingly and to pay them pay and allowances with effect from the respective dates. Action in the above lines should be completed within a period of three months from the date of communication of this order."

The directions issued in the aforesaid O.As were extended to the petitioners. In the meantime, based on the decision of the Supreme Court in **Union of India v. Madras Telephones Scheduled Caste/Scheduled Tribe Social Welfare Association** [1997(10) SCC 226], holding that seniority has to be assigned on recruitment year basis and not on qualifying year basis, respondents issued orders withdrawing the benefit granted to the petitioners as per the directions of CAT. This came to be challenged before the CAT in separate proceedings, which came to be dismissed, against which separate original petitions were filed. During the pendency of original petitions, Supreme Court had occasion to consider certain applications in connected

matters and by judgment in **Union of India v. Madras Telephone SC/ST Social Welfare Association** [2000(9) SCC 71] it was held that those persons who were already granted the benefits on the basis of earlier decisions should not be reverted. The original petitions were therefore disposed of directing the Department to consider the matter afresh. Department, however, took a decision to withdraw the benefits granted to the petitioners in O.A.Nos.603/1988 and 605/1988. Petitioners filed separate original applications before the CAT, Ernakulam Bench. The same were dismissed, challenging which the writ petitions were filed. The Division Bench of this Court in W.P.C.No.3807/2005, based on the decision in a clarification petition in **Union of India v. Madras Telephone SC/ST Social Welfare Association** [(2006) 8 SCC 662], quashed the impugned orders to the extent it affected the writ petitioners and restored the benefits granted, as per common order in O.A.Nos.603/1988 and 605/1988.

6. During the pendency of these contempt cases, petitioners in CCC Nos.623/2009 and 671/2009 were promoted, by orders dated 26/09/2009 as SDE with effect from 07/05/1981 and as Senior SDE with effect from 07/05/1993. By order dated 25/09/2010, their revised seniority on Recruitment year basis was fixed as 5138.010 and 5138.012 respectively. They were also promoted to the DE grade (ad-hoc) (STS) with effect from 04/09/2002, taking into account the position of Sri.Belani, their immediate junior. Petitioners in CCC No.836/2010 were promoted, by order dated 23/07/2010 as SDE (T) with effect from 29/08/1983.

7. The complaint of the petitioners is that they were not promoted to the post of DE & DGM based on qualifying year.

8. According to the respondents, the effect of restoration of earlier promotion orders on qualifying year basis is restricted to promotion to the grade of TES Group-B. Promotions of comparable Officers to STS in DE Grade were

made in August, 1997, based on eligibility list of SDE's (T) prepared on qualifying year basis as the said system was in vogue from 1992 to March 2001, when it was revised on recruitment year basis as per judgment dated 26/04/2000 of the Supreme Court in CA No.4339/1995. Therefore, consequent benefit of promotion to STS has to be given based on the seniority list prepared on Recruitment year only. Staff No.5503, Sri.Ram Prasad Ram and staff No. 5504, Sri.Saha Ratan Kumar were assigned seniority Nos.1611 and 1612 respectively. Their promotion to DE grade on adhoc basis was made on 28/08/1997 on the basis of seniority list in TES group-B prepared on qualification basis. However, after the judgment, promotion to DE grade has to be at par with promotion of their juniors as per the seniority assigned to juniors and the petitioners on recruitment year basis, in accordance with the judgment of the Supreme Court in Civil Appeal No.4339/1995. Based on the turn of promotion with reference to the seniority on recruitment year basis, the petitioner was given DE (Adhoc)

promotion in September 2002 along with their juniors. Further, revision of promotion to DE grade is not warranted. It is therefore contended that the claim of the petitioners for DE and DGM promotions based on qualifying year cannot be accepted.

9. Having regard to the aforesaid factual controversies involved in the matter, the short question to be considered is whether the respondents have committed wilful contempt of the directions issued by this Court.

10. Complaint of the petitioners is that the consequential benefits arising from restoration of seniority has not been given to them. According to them, persons with seniority Nos.5503 and 5504 were promoted as STS with effect from 28/08/1997. The petitioners in CCC Nos.623/2009 and 671/2009 claim for a placement as DE with effect from 28/08/1997 whereas, according to them, they were erroneously granted placement along with one Mr.M.R.Belani who is not the immediate junior of the petitioners. M.R.Belani passed the qualifying examination of

TES Group B only in the year 1987.

11. Before proceeding further, it would be useful to refer to the judgment of the Supreme Court in **Madras Telephone** [(2000) 9 SCC 71] (supra), in which it is held as under:

"In this view of the matter, we are of the considered opinion that the judgment of this Court in Civil Appeal No. 4339 of 1995 has rightly been decided in interpreting the relevant provisions of the Recruitment Rules read with the procedure prescribed under the memorandum dated 28-6-1966. We however, make it clear that the persons who have already got the benefit like Parmanand Lal and Brij Mohan by virtue of the judgments in their favour, will not suffer and their promotion already made will not be affected by this judgment of ours.

18. Since the departmental authorities had not implemented the decisions of this Court in Civil Appeal No. 4339 of 1995 for which a contempt petition had been filed, having regard to the circumstances under which the departmental authorities entertained bona fide difficulties, it would not be proper to proceed against the authorities under the contempt and the contempt proceedings accordingly are dropped. We would, however direct the departmental authorities to

proceed in accordance with law and in accordance with the observations made by us in this judgment and promotions may be made within a period of six months from the date of this judgment."

In the clarification order in **Madras Telephone** [(2006) 8 SCC 662] (supra), it is held as under:

"19. We, therefore, direct that such of the applicants whose seniority had been determined by the competent authority, and who had been given benefit of seniority and promotion pursuant to the orders passed by courts or tribunals following the principles laid down by the Allahabad High Court and approved by this Court, which orders have since attained finality, cannot be reverted with retrospective effect. The determination of their seniority and the consequent promotion having attained finality, the principles laid down in later judgments will not adversely affect their cases."

The Division Bench of this Court in W.A.No.3807/2005 directed that the benefits the petitioners got as per the order of the CAT is to be restored and the consequential benefits, if any, payable should be released within four months.

12. It is not in dispute that the petitioners were given the benefits of the order of the CAT. Their claim is that they were entitled to further promotions in the very same stream without reference to the seniority list prepared on recruitment year basis. They rely upon instances where certain persons were granted promotion on recruitment year basis. In fact, Sri.Ram Prasad Ram and Sri.Sahad Ratan Kumar have been assigned seniority on qualifying year basis prior to the judgment of the Supreme Court. It is clear from paragraphs 14 and 15 of the additional counter affidavit filed that petitioners were placed along with Sri.M.R.Belani. Paragraphs 14 and 15 of the additional counter affidavit reads as under:

"14. In this regard, it is respectfully submitted that as per recruitment year seniority prepared in compliance of Supreme Court judgment dated 26.4.2000, the officers with Staff Nos.5503 and 5504 viz Shri.Ram Prasad Ram and Shri.Saha Ratan Kumar have been assigned seniority number 1611 and 1612 respectively. Both these officers belong to SC community. Their promotion to DE grade on adhoc basis have not been made as per the above seniority.

Their promotion to DE grade on adhoc basis on 28.08.1997 as averred in the contempt petition, must have been made on the basis of seniority list of TES Group-B prepared on qualifying year basis. This is so because he recruitment year based seniority was recast after the judgment dated 26/4/2000 of the Supreme Court.

15. The petitioners are utterly confusing between the ST Number and seniority number in respect of the comparable officers having Staff No.5503 & 5504 as mentioned in memo No.232-32/87-STG.II dated 17/05/1991. The effect of restoration of memo dated 17/05/1991 is restricted to promotion to the grade of TES Group-B w.e.f. 07/05/1981. Promotions of comparable officers to STS in DE Grade were made in August 1997 necessarily based on the eligibility list of SDEs (T) prepared on qualifying year basis since qualifying year based seniority was in vogue from 1992 onwards until it was revised on recruitment year basis in March 2001 as per the order dated 26/04/2000 of Supreme Court in Counter affidavit No.4339/1995. Thus, consequential benefit of promotion to STS has to be given based on the seniority list prepared on Recruitment year only. The Hon'ble Supreme Court vide its order dated 25/03/2008 has given the consequential benefit of seniority to similarly placed officers with reference to Shri.M.R.Belani & two others. Accordingly, further

benefit of promotion to STS(DE Grade) has also to be given w.e.f the date of promotion to the grade in respect of Shri.M.R.Belani & two others.”

13. It is therefore clear that this is not a case where the respondents have committed any wilful contempt. They relied upon the orders and judgment of the Supreme Court and have taken a view that as far as future promotions are concerned, the same has to be made taking into consideration the seniority based on recruitment year basis. On a strict interpretation of the judgment, we could only subscribe to the view, that the petitioners were entitled for restoration of their promotion as directed by the CAT order. The same has been admittedly given and consequent payments were also made. The petitioners in these contempt cases complain that future promotions ought to have been given on qualifying year basis. But, when the Supreme Court directed that promotions were to be made on recruitment year basis, future promotions were done only on that basis. In fact in **Madras Telephone** (supra), the Supreme Court observed that persons, who have already got

the benefit like Parmanand Lal and Brij Mohan by virtue of the judgments in their favour, will not suffer and their promotion already made will not be affected by the judgment. In the clarification order also, the Apex Court only indicated that such of the applicants whose seniority had been determined by the competent authority, and who had been given the benefit of seniority and promotion pursuant to the orders passed by Courts or Tribunals following the principles laid down by the Allahabad High Court and approved by the Supreme Court, which orders have since attained finality, cannot be reverted with retrospective effect. It was therefore clear that no reversion could be done retrospectively. No restriction has been imposed on the Department as far as future promotions were concerned.

14. In **Sudhir Vasudeva v. M. George Ravishekar**, [(2014) 3 SCC 373], the Supreme Court held as under:

"19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as

the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court,

as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, Jhareswar Prasad Paul v. Tarak Nath Ganguly, V.M. Manohar Prasad v. N. Ratnam Raju, Bihar Finance Service House Construction .Coop. Society Ltd. v. Gautam Goswami and Union of India v. Subedar Devassy PV."

14. Under such circumstances, having regard to the proposition of law aforesaid, when the respondent authorities have complied with the directions issued by this Court in the writ petitions and future promotions were granted based on a criteria which they thought, is to be followed under the circumstances, we do not think that a case of wilful contempt can be made out.

In the result, these contempt cases are dropped.

**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(A.M.SHAFIQUE, JUDGE)

jsr

