

COCP No.931 of 2015 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**COCP No.931 of 2015 (O&M)
Date of decision:29.07.2015**

Yash Pal Sharma

...Petitioner

Versus

Sh. A.K.Puthia and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Raman B. Garg, Advocate,
for the petitioner.

Mr. Puneet Jindal, Sr. Advocate, with
Ms. Sakshi, Advocate, for the respondents.

Rakesh Kumar Jain, J.

This petition is filed under the provisions of the Contempt of Courts Act, 1971 (hereinafter referred to as the “Act”), for the alleged willful disobedience of the order dated 31.03.2011 passed by this Court in CWP No.6667-CAT of 2002 titled as “Yash Pal Sharma vs. Union of India and others”.

There is no dispute that the petitioner had instituted OA No.680/PB of 1997 before the Central Administrative Tribunal (hereinafter referred to as the “CAT”). The said O.A. was dismissed by the CAT on 10.01.2002. The said order was challenged by the petitioner by way of CWP No.6667-CAT of 2002. The writ petition was allowed on 31.03.2011, order of the CAT was set aside, the order dated 23.05.1997 redeploying the

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petitioner as Armature Winder was quashed and the order dated 25.08.1994 was upheld. It was also ordered that the respondents would give effect to the aforesaid order dated 25.08.1994 with all the consequential benefits.

After notice, the respondents have filed reply and raised objection about maintainability of this petition, alleging that the petitioner has an efficacious remedy under Section 17 of the Administrative Tribunal Act, 1985 (hereinafter referred to as the “Act of 1985”) and has relied upon a judgment of this Court in the case of **Tarlok Singh vs. B.N.Mathur, General Manager and another**, 2008(3) S.C.T. 73. It is also alleged that the Division Bench had decided two writ petitions together by a common order dated 31.03.2011, in which CWP No.8052-CAT of 2002 titled as “Bhupinder Singh vs. Union of India and others” was also allowed in the same manner, but the said Bhupinder Singh had filed a petition under Section 17 of the Act before the Tribunal, which was registered as CP-06/12 & MA 09/12 in OA-680/PB/1997. The said CP was withdrawn by Bhupinder Singh with liberty to institute the original proceedings in accordance with law.

Counsel for the petitioner, while relying upon two judgments of the Supreme Court in the cases of **R. Mohajan & ors. vs. Shefali Sengupta & ors.**, 2012(2) S.C.T.589 and **Ashok Kumar Aggarwal vs. Sumit Bose and Anr.**, 2014(2) S.C.T. 615, has contended that the jurisdiction vests with this Court to entertain the present contempt petition under the Act.

I have heard both the learned counsel for the parties and

perused the available record.

In **R. Mohajan's case (supra)**, the appeal was filed against the order dated 11.06.2010 passed by the CAT whereby the Tribunal had passed the order directing the appellants before the Supreme Court to be present in the Court on the next date of hearing for receiving the charges of contempt and adjourned the matter to 30.07.2010. A preliminary objection was raised by counsel for the respondents therein about maintainability of the appeal before the Supreme Court, without exercising the remedy before the High Court. It is pertinent to mention that after the order dated 09.05.2005 passed by the Tribunal in O.A. No.203 of 1997, the beneficiaries of the said order filed Civil Procedure Code No.113 of 2005 before the CAT, Calcutta Bench, contending that the order has not been implemented in full by the appellants before the Supreme Court. Thus, in those circumstances, the Tribunal directed the contemner-appellants in the said case to remain present on the next date of hearing and to receive the charges of contempt. In the said circumstances, it was held that the aggrieved party had a right to approach the Supreme Court without exercising the remedy before the High Court, as observed in **L. Chandra Kumar vs. Union of India and others**, (1997) 3 SCC 261.

Apparently, this judgment is not applicable to the facts and circumstances of the present case.

In **Ashok Kumar Aggarwal's case (supra)**, there was no such question involved about the jurisdiction for filing the contempt petition before this Court, therefore, this judgment has been unnecessarily cited by

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counsel for the petitioner.

As regards the judgment relied upon by learned counsel for the respondents in **Tarlok Singh's case (supra)**, in that case, the Tribunal held the petitioner therein to be ineligible for the grant of senior scale. In the said case, the petitioner filed writ petition before this Court challenging the order dated 06.02.2001 passed by the learned Tribunal to such extent and sought directions to the respondents to fix his pay in the senior scale equal to his juniors. The said writ petition was allowed and direction was issued to release proforma promotion, if not already released, to the petitioner together with all consequential benefits and selection grade from the date the same were given to the persons junior to the petitioner. The said petitioner invoked the contempt jurisdiction of this Court, alleging that the directions issued by this Court have not been complied with. At the outset, the Court was asked to decide about the jurisdiction of this Court to entertain the contempt petition, particularly when the Tribunal had the jurisdiction to initiate the proceedings under Section 17 of the Act of 1985. In this background, this Court had held that no doubt the order of the Tribunal stands merged with the order passed by this Court, but it is the order passed in a service matter falling within the jurisdiction of the Act of 1985, thus, the Tribunal had the jurisdiction to entertain the contempt petition in respect of such an order under Section 17 of the Act of 1985. It was also held that though this Court has the jurisdiction to entertain the contempt petition under Article 215 of the Constitution of India, but keeping in view the availability of forum under the Act of 1985 to the

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petitioner, it would be appropriate for the petitioner to seek his remedy under the Act of 1985 alone. Further, this Court held that even if the Tribunal and the High Court both have the jurisdiction to entertain the contempt petition, but keeping in view the principle that if two Courts have the parallel jurisdiction to entertain a matter, then it is the inferior Court whose jurisdiction should be first enforced, the petitioner was bound to invoke the jurisdiction of the Tribunal under Section 17 of the Act of 1985.

Thus, in view of the aforesaid discussion, I am of the considered opinion that the present petition under the provisions of the Act is not maintainable and is dismissed as such, as the petitioner has the remedy to invoke the jurisdiction of the Tribunal under Section 17 of the Act of 1985.

Since counsel for the petitioner had insisted that this Court had the jurisdiction in view of the decisions of the Supreme Court in **R. Mohajan's case (supra)** and **Ashok Kumar Aggarwal's case (supra)**, which are totally inapplicable to the facts and circumstances of the present case and knowingly relied upon these judgments, therefore, the petitioner is burdened with costs of ₹20,000/-, which shall be deposited with the Legal Services Authority of this Court, within a period of one month.

July 29, 2015
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(Rakesh Kumar Jain)
Judge