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

+ CONT.CAS(C) 148/2013

DR. (MRS.)RADHIKA BAHL

..... Petitioner

Through: Mrs. Jyoti Singh, Sr. Adv. with Ms.
Tinu Bajwa, Mr. Amandeep Joshi &
Ms. Priyam Mehta, Advs.

Versus

D.K. UPADHYAYA DIG (PERS)

..... Respondent

Through: Ms. Barkha Babbar, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.02.2015

1. Contempt is averred of the judgment dated 20th September, 2011 in W.P.(C) No.2475/2011 filed by the petitioner. Vide para no.15 of the said judgment, it was held that the petitioner would be entitled to have her seniority reckoned from the date she was initially appointed. Vide para no.19 of the said judgment, a mandamus was issued to the “Competent Authority” to treat the writ petition as a representation praying that power be exercised under Rule 88 of the CCS Pension Rules and applicability of Sub-Rule 6 of Rule 26 of CCS Pension Rules be waived qua the petitioner and to take a decision thereon within sixteen weeks.

2. The counsel for the respondent has drawn attention to the Seniority List (at page no.167 of the paper book) drawn up in pursuance to the aforesaid direction and in which seniority list, the name of the petitioner appears at serial no.18 and to the Certificate dated 3rd May, 2014 issued by the petitioner of having seen the said seniority list and being satisfied therewith.

3. The counsel for the respondent has further stated that in accordance with the mandamus issued, an order dated 17th April, 2012 was also passed rejecting the representation of the petitioner.

4. The senior counsel for the petitioner though has not urged any argument qua the delay in compliance of the order but has contended that the order dated 17th April, 2012 in compliance of the mandamus issued is not in terms of the judgment and spirit thereof and thus the respondents are in contempt. It is contended that though Rule 88 (supra) is noticed in the said order but has not been properly applied. It is further contended that the said order is passed on stale material i.e. on the basis of the advice of Department of Personnel and Training (DOPT) which had been obtained prior to the judgment and which advice obviously did not take into account the observations made in the judgment and also did not consider granting

exemption to the petitioner from Rule 26(6) by invoking power under Rule 88 (supra). It is argued that the respondent in compliance of the order ought to have taken fresh advice from the DOPT. It is further argued that the order dated 17th April, 2012 merely reiterates the earlier order.

5. I am, from the contentions aforesaid, unable to find a case for contempt to have been made out. In my opinion, an order passed under a direction of the Court for fresh consideration, even if reiterating the earlier decision, would not cease to be a fresh order. It is not essential for the deciding authority to in compliance of the said direction necessarily arrive at different conclusion than that arrived at earlier or be accused of not complying with the order. It is well nigh also possible that the deciding authority, on the earlier occasion has considered the matter from all perspectives and has no new reason to give. In such a situation also, the deciding authority cannot be said to have not complied with the order. Moreover, nothing is pointed out in the order dated 17th April, 2012 from which it can be said that there was no fresh consideration. It is also not as if there was in the instant case any direction for ‘fresh’ consideration. The direction was only to treat the writ petition as representation for waiver of Rule 26(6) and pass order thereon. The order dated 17th April, 2012 is found

to have considered the aspect of waiver.

6. As far as the aspect of fresh advice of DOPT having not been taken, the direction of this Court was to the “Competent Authority”. The senior counsel for the petitioner also agrees that the “Competent Authority” is the Ministry of Home Affairs (MHA) which has passed the order dated 17th April, 2012. She however contends that as per the Rules, the MHA could have exercised the power under Rule 88, only after taking the advice of the DOPT and could not have exercised the said power itself.

7. I am of the opinion that if the petitioner desired that the fresh advice of DOPT should be taken, the petitioner ought to have sought a direction to the said effect, expressly in the order in the writ petition and no case for invoking the contempt jurisdiction on this ground is made out. I am also of the opinion that this Court in exercise of contempt jurisdiction cannot go into the merits of the decision so taken in pursuance to the directions of the Court, unless there is a specific direction as to the factors to be taken into consideration while taking the decision and in which case perhaps, the order so passed can be seen to the extent of finding out whether the said factors have been taken into consideration or not. In the present case, the order dated 17th April, 2012 is found to be repeatedly referring to Rule 88 (supra)

and thus it cannot be said that the decision making authority was oblivious thereof. The question, whether the decision making authority has correctly applied Rule 88 or not, cannot be the subject matter of contempt jurisdiction and has to be agitated by way of challenge to the order dated 17th April, 2012.

8. Though there is some controversy with respect to, whether the advice of DOPT is essential for the MHA to exercise powers under Rule 88 or not, with the counsel for the respondent contending that it is not mandatory but in my opinion there is no need to return any finding on the said aspect as in view of the above nothing would turn on the said aspect.

9. There is another aspect. Where the order is capable of two different interpretations, then certainly no contempt lies for proceeding on one interpretation and on the ground of some other interpretation required to have been made. Reference in this regard may be made to ***D.K. Attery Vs. Kanwal Singh Mehra*** 159 (2009) DLT 764.

10. Accordingly, no further orders are required in this contempt petition. Notice of contempt earlier issued is discharged.

11. Needless to state that anything observed hereinabove would not come in the way of the petitioner exercising her rights in law with respect to the order dated 17th April, 2012.

RAJIV SAHAI ENDLAW, J

FEBRUARY 20, 2015

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