

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

+ **W.P.(C) 1533/2015 & CM APPL. No.2731/2015 (Direction)**

**V.K. KADYAN** ..... Petitioner

Through **Mr. Rajeev Sharma, Advocate**

versus

**P.K. GUPTA** ..... Respondent

Through **Mr. Gaurang Kanth, Advocate**

**CORAM:**

**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

**HON'BLE MR. JUSTICE I.S.MEHTA**

**ORDER**

% **20.02.2015**

**KAILASH GAMBHIR, J. (ORAL)**

1. By this Writ Petition filed under Articles 226 and 227 of the Constitution of India, the petitioner seeks to challenge the order dated 12.12.2014 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'CAT'*) whereby the learned CAT had dismissed the Contempt Petition No. 4/2014 in O.A. No.1640/2013 preferred by the petitioner.

2. The grievance raised by the petitioner in the instant petition is that the respondents have committed contempt of the Court by not promoting him to the post of Superintending Engineer (Civil) in terms of the direction given by the learned CAT vide order dated 23.08.2013 passed in O.A. NO.1640/2013. As per the petitioner, he has been continuously working as Executive Engineer (Civil) since 2000 on look after basis and

on *ad hoc* basis since October, 2002 and despite the fact that the petitioner was fully exonerated from the departmental enquiry on 11.05.2012 he was not considered for promotion to the post of Executive Engineer (Civil) while his juniors were promoted to the said post and then to the next higher post of Superintending Engineer (Civil).

3. The petitioner has also averred that he had preferred an O.A. being No. 1640/2013 and vide order dated 23.08.2013, the learned CAT directed the respondents to reconsider the case of the applicants/petitioners for promotion w.e.f. from the date of promotion of their juniors and in the event of being found fit, they will be given the consequential benefits. The petitioner's grievance is that despite the said direction, the respondents have not granted promotion to the petitioner w.e.f. from the date of promotion of officers junior to him which is in violation of the learned CAT's order.

4. Mr. Rajeev Sharma, the learned counsel for the petitioner strongly urged that three officers who are presently holding the post of Superintending Engineer (Civil) are much junior to the petitioners and they were regular Assistant Engineers and were promoted as Executive Engineers on *ad hoc* basis and thereafter in the year 2007 were given the charge of higher post of Superintending Engineer (Civil). The contention raised by the learned counsel for the petitioner is that a person who was

not even a regular Executive Engineer (Civil) was not eligible to be assigned the charge of higher post of Superintending Engineer (Civil).

5. The learned counsel further submits that DPC for the post of Executive Engineer (Civil) was not convened by the respondents for the period 1997-2008 although the petitioner became eligible to be promoted to the said post in the year 1995. The learned counsel also submits that pursuant to the direction given by the learned CAT vide order dated 23.08.2013, the case of the petitioner was considered by the Review DPC and vide Office order dated 11.07.2014, the petitioner was promoted to the post of Executive Engineer (Civil) on regular basis and his seniority was fixed at Sr. No.125-A in the revised final select list of Executive Engineer (Civil) but the review DPC failed to consider the case of the petitioner for regular promotion to the post of Superintending Engineer (Civil). The learned counsel also submits that the petitioner after making a discreet inquiry came to know that out of the total 35 officers who were working as Superintending Engineer (Civil) either on *ad hoc* basis or look after/ current charge duty basis, at least three officers namely, Sarva Sh. R.P. Garg, K.P. Singh and Sushil Kumar were not promoted even as Executive Engineer and therefore, these officers cannot occupy the post of Superintending Engineer (Civil) in view of the decision of this Court dated 17.04.1998 and a Circular dated 20.07.1998 issued by the MCD.

The learned counsel thus submits that in this background of facts the petitioner was constrained to file a contempt petition but the learned CAT instead of taking cognizance of the contempt committed by the respondents, took a view that if the petitioner is aggrieved by the action of the respondents then it gives him a fresh cause of action to take appropriate steps. As per the learned counsel for the petitioner, such a reasoning given by the learned CAT is absurd and preposterous.

6. We have heard the learned counsel for the parties.

7. The petitioner is aggrieved by order dated 12.12.2014 passed by the learned Tribunal in the Contempt Petition No.4/2014 preferred by him alongwith Mr.Rambir Singh Bansal. In the Contempt petition, the grievance of the petitioner was the non compliance of order dated 23<sup>rd</sup> August, 2013 passed by the learned Tribunal in O.A.No. 1640/2013. The direction given by the learned Tribunal is reproduced as under:

*“14. In view of the aforementioned, the present O.A. is allowed. The respondents are directed to reconsider the applicants for their promotion with effect from the date of promotion of their juniors and in the event of being found fit, they will be given the consequential benefits. Needful shall be done within a period of three months from the date of receipt of a copy of this order. No costs.”*

8. In compliance of the order dated 23.08.2013 and on the recommendation of DPC held on 11.6.2014, in UPSC, Shri Rambir Singh Bansal and V.K. Kadyan were granted promotion to the post of Executive

Engineer (Civil) on regular basis in pay band III, Rs.15600-39100 + Grade Pay Rs.6600/- w.e.f. 8.9.2008. Consequent upon their regular promotion to the post of Executive Engineer (Civil) the seniority of the petitioner had been fixed at Sr. No.125-A in the revised final seniority list of Executive Engineer (Civil). Apropos the promotion of the petitioner to the post of Superintendent Engineer (Civil), the stand taken by the respondents before the learned Tribunal was that the matter is under process and the name of the petitioner for promotion to the post of Superintendent Engineer (Civil) would be considered as and when vacancy in the grade of Superintendent Engineer (Civil) arises.

9. The grievance of the petitioner was that several persons who are his juniors are holding the post of Superintendent Engineer (Civil). The stand of the respondents has been that there's no vacancy in the cadre of Superintendent Engineer (Civil) and it is only when three vacant posts of Chief Engineer (Civil) are filled up by the incumbents holding the post of Executive Engineers, will the vacancy arise in the cadre of Superintendent Engineer for the applicants to be promoted. It was also the stand of the respondents that the High Court of Delhi, in W.P. (C) No. 5356/2014 and C.M. Appl. No. 10664/2014 has passed status quo order in respect of promotion to the post of Chief Engineer (Civil) on current

duty charge and, therefore, in view of this order, promotions to the post of Chief Engineer (Civil) cannot be done. As a result, vacancies in the cadre of Superintendent Engineer (Civil) may not occur. In the background of these facts, the stand taken by the respondents before the learned Tribunal was that they have not committed any contempt or wilfully defied the orders of the learned Tribunal, as every possible steps was taken to consider the case of the applicants' promotion to the post of Superintendent Engineer (Civil).

10. In view of the aforesaid facts and circumstances of the case, we find no infirmity in the reasoning given by the learned Tribunal. However, the learned counsel for the petitioner also failed to point out as to how and in what manner, it can be said that the respondents have committed contempt of the Court's order. In compliance of the direction given by the learned Tribunal vide orders dated 23.08.2013, a review DPC was held on 11.6.2014 where the decision was taken to give a regular promotion to the petitioner to the post of Executive Engineer (Civil) and his seniority was fixed at Sr. No.125-A and so far his claim for promotion to the post of Superintendent Engineer (Civil) is concerned, the stand taken by the respondent is that the vacancy in the cadre of Superintendent Engineer (Civil) would arise only when three

vacant posts of Chief Engineer are filled up and the promotion to the post of Chief Engineer (Civil) could not be carried out because of operation of the status quo order, granted by this Court in W.P. (C) No. 5356/2014 and C.M. Appl. No. 10664/2014.

11. In order to hold a person guilty of contempt an intention has to be there to act in violation of the Court's order, that is, to consciously defy the order of the Court. In ***Dinesh Kumar Gupta v. United India Insurance Company Limited***, (2010) 12 SCC 770, the Supreme Court dealt in detail with the question of civil contempt and held that mere unintentional disobedience is not enough to hold anyone guilty of contempt. Absence of wilful disobedience on the part of the contemnor will not hold him guilty unless the contempt involves the task of fault or misconduct. Paras 17, 23 and 24 of the report are extracted hereunder:-

*“17. This now leads us to the next question and a more relevant one, as to whether a proceeding for contempt initiated against the appellant can be held to be sustainable merely on speculation, assumption and inference drawn from facts and circumstances of the instant case. In our considered opinion, the answer clearly has to be in the negative in view of the well-settled legal position reflected in a catena of decisions of this Court that contempt of a civil nature can be held to have been made out only if there has been a wilful 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. In fact, if an order is capable of more than one interpretation giving rise to variety of consequences, non-compliance with the same cannot be held to be wilful disobedience of the order so as to make out a case of contempt entailing the*

*serious consequence including imposition of punishment. However, when the courts are confronted with a question as to whether a given situation could be treated to be a case of wilful disobedience, or a case of a lame excuse, in order to subvert its compliance, howsoever articulate it may be, will obviously depend on the facts and circumstances of a particular case; but while deciding so, it would not be legally correct to be too speculative based on assumption as the Contempt of Courts Act, 1971 clearly postulates and emphasises that the ingredient of wilful disobedience must be there before anyone can be hauled up for the charge of contempt of a civil nature.*

*23. Besides this, it would also not be correct to overlook or ignore an important statutory ingredient of contempt of a civil nature given out under Section 2(b) of the Contempt of Courts Act, 1971 that the disobedience to the order alleging contempt has to satisfy the test that it is a wilful disobedience to the order. Bearing this important factor in mind, it is relevant to note that a proceeding for civil contempt would not lie if the order alleged to have been disobeyed itself provides scope for reasonable or rational interpretation of an order or circumstance which is the factual position in the instant matter. It would equally not be correct to infer that a party although acting due to misapprehension of the correct legal position and in good faith without any motive to defeat or defy the order of the Court, should be viewed as a serious ground so as to give rise to a contempt proceeding.*

*24. To reinforce the aforesaid legal position further, it would be relevant and appropriate to take into consideration the settled legal position as reflected in the judgment and order delivered in Ahmed Ali v. Supdt., District Jail [ 1987 Cri LJ 1845 (Gau)] as also in B.K. Kar v. High Court of Orissa [ AIR 1961 SC 1367 : (1961) 2 Cri LJ 438] that mere unintentional disobedience is not enough to hold anyone guilty of contempt and although disobedience might have been established, absence of wilful disobedience on the part of the contemnor, will not hold him guilty unless the contempt involves a degree of fault or misconduct. Thus, accidental or unintentional disobedience is not sufficient to justify for holding one guilty of contempt. It is further relevant to bear in mind the settled law on the law of contempt that casual or accidental or unintentional acts of disobedience under the circumstances which negate any suggestion of contumacy, would amount to a contempt in theory only and does not render the contemnor liable to punishment and this was the view expressed also in State of Bihar v. Rani Sonabati Kumari [AIR 1954 Pat 513] and N. Baksi v. O.K. Ghosh [AIR 1957 Pat 528].”*

12. In light of the aforesaid observations, we do not find any merit in the present petition. The same is hereby dismissed with no orders as to costs.

**KAILASH GAMBHIR, J.**

**I.S.MEHTA, J.**

**FEBRUARY 20, 2015**  
v/pkb