

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9019 OF 2013

Shri Arun Kumar Shrivastava
Retired Central Govt. Employee was
working as Director/Controller Warehousing
Material Organisation, Naval Store Depot,
Ghatkopar (West), Mumbai 400 086 and
Residing at Naval Park, 02 Kaveri,
L.B.S. Marg, Ghatkopar (West),
Mumbai 400 086 .. Petitioner

Vs.

1. Union of India through
The Defence Secretary,
101, A South Block, Ministry of Defence,
New Delhi 110 011.
2. The Chief of Naval Staff
For Principle Director of Civilian Personnel
Integrated Headquarters, Ministry of
Defence (Navy), Sena Bhavan,
New Delhi, 110 011.
3. The Flag Officer Commanding-in-Chief,
For The Chief Administrative Officer,
Command Civilian Personnel Officer,
Naval Headquarter,

Western Naval Command,
Shahid Bhagat Singh Road,
Mumbai 400 023.

.. Respondents

Ms.Manda Loke, for the Petitioner.
Smt.Neeta Masurkar a/w Mr.Vinay S.Masurkar & Mr.Vinod
Joshi, for Respondents No. 1 to 3 / Union of India.

**CORAM : SMT. V.K.TAHILRAMANI &
M.S.KARNIK, JJ.**

29th MARCH, 2017

JUDGMENT (PER M.S.KARNIK, J) :

. Rule. By consent of the parties, Rule is made returnable forthwith and the matter is heard finally.

2. The petitioner in this Petition has sought direction to the respondents to implement and comply the order dated 09/01/2012 in Original Application No. 285 of 2011 passed by the Hon'ble Central Administrative Tribunal, Bombay Bench, Mumbai (hereinafter referred to as 'Tribunal' for short) The petitioner has also prayed for the following reliefs.

“.....(ii) That this Hon'ble Court may be pleased to issue appropriate writ in the nature mandamus or order and direction to the respondents to implement the order dated 9th January, 2012 and further direct them to amend Recruitment Rules as per 6th Pay Commission and issue Promotion order w.e.f. 26 September, 2008 i.e. date of officiating as Director.

(ii) That this Hon'ble Court may be pleased to issue appropriate writ in the nature mandamus or order and direction to the respondents for implementation of the Promotion order and further to issue direction for granting officiating allowance to the applicants w.e.f. 26 Sept., 2008.

(iii) That this Hon'ble Court may be pleased to issue appropriate writ in the nature mandamus or order and direction to the respondents for granting officiating allowance to the applicants w.e.f. 9 May 07 to 24 Aug, 07;...”

3. The petitioner had filed Original Application No. 285 of 2011 before the Tribunal in respect of the grievance pertaining to the officiating allowance for working on the post of Director with effect from 01/10/2008. Second grievance of the petitioner relates to his regular promotion to the post of Director. The said Original Application came to be disposed of by partly allowing the Original Application in the following terms.

“...5. In this backdrop, we are of the considered opinion that the respondents should consider the case of the applicant for grant of officiating Allowance as per rules, duly taking into consideration F.R.49. Respondents shall do the needful within three months from the date of receipt of a copy of this order so far as the first grievance of the applicant regarding Officiating Allowance is concerned. On considering his case, if the applicant is found to be eligible, he shall be entitled to arrears, etc.

from the date he has been discharging the duties of Director in question. Ordered accordingly.

6. Turning to the second grievance of the applicant, i.e. regular promotion to the post of Director, it is noted from the impugned order as well as reply that the respondents are in the process of seeking suggestion for providing a combined service of NSO/SNSO from various quarters. This would also need an amendment to the recruitment rules. Therefore, this whole procedure would require some time to do the needful to redress the grievance of the applicant and other similarly situated officers, if any.

7. Keeping in view the totality of the facts and circumstances of the case, and the submissions made by the parties at the bar, the respondents are also directed to carry out the process of amendment of the recruitment rules within a period of six months from the date of receipt of a copy of this order and do the needful within the said period in terms of para (c) of the order dated 15.06.2010 read with similar averments made in the reply. Ordered accordingly....”

4. Pursuant to the order dated 09/01/2012, the respondents filed Misc. Application No. 1020 of 2012 submitting compliance report in respect of the order passed by the Tribunal. The said Misc. Application was disposed of by the Tribunal by order dated 15/01/2013 observing that the directions issued by the Tribunal have been complied with. The relevant portion of speaking order dated 25/10/2012 passed by the respondents in compliance with the Tribunal's order reads thus :

“....6. As regards the Tribunal's direction for payment of officiating allowance, it is to state that you were entrusted with the duties of CWH by the MS when :

- (i) The officer holding the post of Director (stores) proceeded on leave from 09th May to 24th Aug 2007.
- (ii) The Director was promoted and posted out wef.26 Sep. 2008 and the post was lying vacant because of ineligibility of officers in the feeder grade for promotion as per existing RRs.

These two temporary officiating arrangements were made by the officer-in-charge of Material Organisation and not by the Cadre Controlling Authority which is IHQ MoD (Navy)/DCP or by MoD, the Appointing Authority for the post of Director.

Besides above, you are not fulfilling all the criteria under FR. 49 as contained in Chapter VI (Combination of Appointments) in Swamy's Compilation on Fundamental Rules.

7. In so far as the Tribunal's direction for completion of revision of RRs within six months and considering your case for promotion to the grade of Director, it is stated that the proposal for amendment of RRs of NSOs is in progress and presently the case is with MoD/DOP &T. However, the case for one time relaxation of qualifying service for promotion from SNSO to Director was considered by DOP&T and accordingly, two officers viz Shri Hari Om Singh and yourself have been promoted to the grade of Director in the pre-revised pay scale of Rs.14300-18400/- (now revised to Rs.37400-67000 with Grade Pay of Rs.8700) vide IHQ letter No. CP(G)/4006/DIR/DPC dated 21 Sep 2012.

8. In view of the position explained above, your prayer for promotion to the grade of Director has already been addressed to. However, your request for officiating allowance or pay of the higher post for the periods in which you were holding the charge of Director /CWH under the internal arrangement of Material Organisation (MB), was not found admissible under extant rules.”

5. The Tribunal by order dated 15/01/2013 also disposed of Contempt Petition No. 1 of 2013 filed by the petitioner observing that the order of the Tribunal is duly

complied with. As indicated earlier, the petitioner's main prayer is for implementing order dated 09/01/2012 passed by the Tribunal. The principal contention raised by the learned Counsel for the petitioner is that the implementation of the order passed by the Tribunal is not in consonance with the provisions of F.R. 49 (Fundamental Rules). Learned Counsel for the petitioner placed reliance on F.R. 49 to contend that respondents have not implemented the order passed by the Tribunal.

6. In our opinion, the present Petition is completely misconceived. In the light of directions issued by the Tribunal and after considering the provisions of F.R. 49, the respondents have passed a speaking order dated 25/10/2012 in compliance with the order passed by the Tribunal. If the petitioner is aggrieved by the order dated 25/10/2012, it is for the petitioner to seek appropriate recourse against the same in accordance with law. The petitioner is virtually calling upon the Tribunal to decide the legality and propriety of the order dated 25/10/2012

in contempt proceedings which is not the scope of contempt jurisdiction. The said prayer therefore cannot be entertained in this Petition. The Contempt Petition filed by the petitioner before the Tribunal contending non-compliance of the order passed by the Tribunal has rightly been rejected by the Tribunal holding that the order of the Tribunal is complied with. Consequently the Tribunal is also justified in rejecting the Review Petition filed in respect of the order in Contempt Petition holding that there was no error apparent on the face of the record.

7. In this view of the matter, as the directions issued by the Tribunal are duly complied with, we do not see any reason to issue directions as prayed for by the petitioner in exercise of our extraordinary writ jurisdiction.

8. The Writ Petition, therefore, stands rejected with no order as to costs. Rule is discharged.

(M.S.KARNIK, J.)

(SMT. V.K.TAHILRAMANI, J.)