

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION NO. 26 OF 2015
IN
WRIT PETITION NO. 1243 OF 2013

WITH

NOTICE OF MOTION (L) NO. 131 OF 2017
IN
CONTEMPT PETITION NO. 26 OF 2015
IN
WRIT PETITION NO. 1243 OF 2013

Ms.Sushama V. Dabak	.. Petitioner
Vs.	
Shri Shashi Kant Sharma	.. Respondent

Ms.Sushama V. Dabak – Petitioner in-person.
Mr.Vinod Joshi, for Respondent.

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

13th OCTOBER, 2017

ORDER :

1. The Contemnor is alleging breach of the order dated 07/07/2014 passed by this Court in Writ Petition No.

1243 of 2013 and the order dated 15/03/2013 in Original Application No. 442 of 2011 passed by the Central Administrative Tribunal, Mumbai (for short the 'Tribunal').

2. The petitioner approached the Tribunal with a grievance that she was not considered for promotion to the post of Principal Accountant General (PAG). The Tribunal by order dated 15/03/2013 was pleased to allow the Original Application. Paragraph 20 of the operative portion of the order passed by the Tribunal reads thus :

“20. In view of the above, the OA is allowed. The impugned communications dated 21.04.2010, 21.09.2010 & 17.01.2011(page 19) are quashed. We direct the respondents to treat the (below benchmark) ACRs of uncommunicated years to be ignored. A fresh DPC should be held within a month, if required by circulation. The APARs of the applicant which were considered as sufficient to declare her fit for promotion for the year 2009 should be compared with the relevant APARs to be considered for the purpose of 2008 and if found fit, the applicant should be promoted to the grade of PAG (Principal Accountant General) with effect from 29.05.2008 and her seniority over her junior officers should be restored. The decision of the DPC as well as consequential orders regarding her promotion shall be communicated to her within six weeks. No order as to costs.”

3. The respondent challenged the order passed by the

Tribunal before this Court by way of Writ Petition No. 1243 of 2013. This Court by order dated 07/07/2014 was pleased to dismiss the Petition. In the context of the present Contempt Petition it would be material to reproduce the relevant portion of the order dated 07/07/2014 passed by this Court which reads thus:

“3. The only question is, whether for the purpose of her retirement dues and benefits, the respondent No.1 ought to be considered as having been appointed to the promotional post on 26th May, 2008 when she ought to have been considered for promotion or from 31st July, 2009 when she was finally promoted.

4. By the impugned order, the CAT has rightly come to the conclusion that respondent No.1's case should be considered as on the date of the first DPC namely, 26th May, 2008 when she was wrongly not considered for the promotion. Further all that the order does is to direct the petitioner to consider her case for the purpose of 2008 and if found fit to be promoted to the said post with effect from 29th May, 2008.

5. The impugned order warrants no interference. In fact, in our opinion, the CAT has come to a correct conclusion. Any other view would have been unfair to respondent No.1 despite the fact that she had fulfilled all the requirements for being considered for promotion as on the date of the first DPC.

6. The petition is therefore, dismissed. No order as to costs.

The impugned order shall be complied within eight weeks from today.”

4. In this Contempt Petition an affidavit-in-reply is filed

by one Shri R.Srinivasan working as Principal Legal Advisor in the office of Comptroller and Auditor General of India, New Delhi stating that as per directions of the Tribunal, the case of the petitioner was considered afresh by the DPC for promotion to the Principal Accountant General grade. On the basis of the recommendations of DPC, office order came to be issued promoting the petitioner and restoring her seniority to the same place at which her name was placed before DPC that was held on 26/05/2008. The petitioner however has been given the benefit from 16/06/2008 viz. the date on which her junior was actually promoted.

5. The petitioner had prior to the filing of the present Contempt Petition filed Contempt Petition No. 110 of 2014 before the Tribunal. The Tribunal by its order dated 28/01/2015 was pleased to dispose the Contempt Petition directing the petitioner to approach this Court as she was also alleging breach of order dated 07/07/2014 passed by this Court.

6. In the affidavit-in-reply a categorical stand has been taken by respondent that the directions of the Tribunal are duly complied with. The petitioner nevertheless has a grievance that the order passed by the Tribunal and this Court has not been complied with in its true letter & spirit. During the pendency of the contempt proceeding respondent issued an order dated 21/02/2017, in further compliance of order dated 15/03/2013 of the Tribunal promoting the petitioner to the grade of Principal Accountant General with effect from 29/05/2008 with all consequential pay and allowances. We had therefore by order dated 31/03/2017 called upon the respondent to have a meeting with the petitioner to sort out the issue so that the remaining grievance of the petitioner, if any, be ventilated. The petitioner was informed by the communication dated 27/04/2017 about proceedings of review DPC held on 25/04/2017 to consider the case of the petitioner for inclusion in the zone of consideration for promotion to the grade of Additional Deputy Comptroller and Auditor General (ADAI). It would be pertinent to reproduce the contents of the

communication dated 27/04/2017.

“1. Please refer to your e-mails dated 27.02.2017, 28.02.2017 and 21.04.2017 on the subject cited.

2. Consequent to your promotion to the grade of Principal Accountant General w.e.f. 29.05.2017 and restoration of your seniority vide this office orders dated 21.02.2017 and 10.01.2017, you became eligible for inclusion in the zone of consideration for promotion to the grade of Additional Deputy Comptroller and Auditor General (ADAI) in the DPCs held during the panel year 2013-14, when your immediate juniors were considered.

3. Accordingly, Review DPCs were held on 25.04.2017 in respect of the earlier DPCs held during the year 2013-14, when your immediate juniors were considered. Your name was included above your immediate juniors in the zone of consideration in the above mentioned Review DPCS.

4. However as sufficient number of officers senior to you, with prescribed benchmark became available for filing up the available vacancies during the year 2013-14, you were not considered for empanelment by the Review DPCs in terms of extant DoPT instructions.

6. Regarding re-fixation of your pension notionally from the date your junior was promoted to the grade of ADAI, it is stated that no officer in your grade and junior to you was promoted to the grade of ADAI prior to your retirement. Your junior Shri G. Sunder Raja was promoted to the grade of ADAI on 28.04.2014 after your retirement.”

7. Again on 29/05/2017 the respondent informed the petitioner in response to her E-mail dated 04/05/2017 that all issues raised by the petitioner are carefully considered thereby justifying the stand of the respondent explaining how the order

of this Court is fully complied with.

8. The petitioner raised the contention before us that the orders passed by the Tribunal and this Court are still not complied. It is her grievance that despite the assurance, recalculation of pensionary benefits and other retirement benefits was not done. It was pointed out by the respondent in its communication dated 29/05/2017 that as the petitioner reached the maximum of PAG scale prior to her retirement, there was no difference in her pensionary benefits. The respondent also dealt with other aspects raised by the petitioner.

9. This Court by order dated 07/07/2014 while dismissing the Writ Petition filed by the respondent challenging the order of the Tribunal has observed that the Tribunal has come to a correct conclusion. This Court has further directed that order passed by the Tribunal should be complied with within 8 weeks from 07/07/2014. We are satisfied that the respondent has substantially complied with the order passed by

the Tribunal. If at all the petitioner has any grievance regarding re-fixation of her pension or proceedings of Review DPC held on 25/04/2017, the same will accord a fresh cause of action to the petitioner which will have to be examined on its own merits by filing appropriate proceedings. It is not possible for us to decide upon the correctness of the orders passed by the respondent in compliance of the order passed by the Tribunal. We are therefore not inclined to entertain the present Contempt Petition and the same is accordingly rejected. However, the petitioner is at liberty to initiate appropriate proceedings for redressal of her grievance regarding re-fixation of her pensionary benefits or challenging the proceedings of the DPC. Notice issued to the respondent stands discharged.

10. In view of disposal of the Contempt Petition, Notice of Motion also stands disposed of accordingly.

(M.S.KARNIK, J.)

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