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

+ **CONT.CAS(C) 910/2014**

VINAY KUMAR JAIN & ORS Petitioners
Through: **Ms. Meenu Mainee, Adv.**

versus

**BIMAL JULKA, SECRETARY MINISTRY OF
I & B ORS** Respondents
Through: **Mr. Ripu Daman Bhardwaj, Adv.
with Mr. Ashish Kr. Shukla, ASO,
Ministry of Information and
Broadcasting.
Mr. Rajeev Sharma and
Ms. Radhalakshmi R, Adv. for R2
and R3.**

**CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER
% 08.03.2018**

The present contempt petition has been filed by the petitioners alleging disobedience of order dated September 19, 2013 passed by the Division Bench of this Court whereby this Court dismissed the Writ Petition (Civil) No. 5388/2012 filed by the respondents challenging the order of the Tribunal dated May 6, 2011 in OA no. 136/2010 filed by the petitioners. The direction of the Tribunal in its order dated May 6, 2011 are as under:

“16. Resultantly, this O.A. is disposing with the following directions:

(i) The applicant shall be encadred into the regular programme cadre. They would be inducted into

IB(P)S as 'Departmental candidates-initial constituent'.

- (ii) The applicants will be entitled for all the consequential benefits, as per rules, including seniority, promotion, arrears of pay and re-fixation of retiral dues wherever applicable. However, in case of arrears, there would not be any entitlement for interest thereon, including that on the retiral dues.*
- (iii) To the extent of applicants, wherever required, supernumerary posts shall be created so as not to affect the other set of employees.*
- (iv) In the matter of promotions, the same would be accorded to the applicants on notional basis only – whether past or future.”*

Reply / rejoinder and other pleadings have been exchanged by the parties. In the last affidavit filed by the respondents it is stated that the order of the Tribunal dated May 6, 2011 has been implemented in respect of all the petitioners and no further action is required to be taken by them. In the additional affidavit filed by the petitioners, it is their case that the respondents even though revised, have failed to pay the arrears of salary as a result of promotions. It is the submission of Ms. Meenu Mainee, learned counsel for the petitioners that in terms of the instructions of the DOP&T dated June 29, 2015, petitioners are entitled to the arrears of salary. She also relied upon the judgement of this court in the case of ***Union of India & Ors. v. G.D. Goel in W.P(C) 4657/2005*** decided by this court on March 14, 2008 in support of her contention.

On the other hand, Mr. Rajeev Sharma, learned counsel appearing for

the respondent nos.2 and 3 states, direction in Para 16 (ii) is not a direction, but an observation that in accordance with the rules, the consequential benefits like seniority, promotion, arrears of pay and re-fixation of retiral dues are payable wherever applicable and in Para 16 (iv) the Tribunal explicitly stated the promotions, would be accorded, whether past or future, only on notional basis.

Having heard the learned counsel for the parties, it may be stated here, as noted above, the judgment of the Tribunal has been upheld by this court in a writ petition filed by the respondents herein. In other words, the judgment of the Tribunal has to be implemented in the manner directed by the Tribunal. The thrust of the argument of Ms. Mainee is that the DOP&T instructions dated May 29, 2015 and judgment of this court dated March 14, 2008 in ***Union of India v. G.D. Goel*** allows payment of arrears of salary on promotion. Suffice to state, the present petition being a contempt petition, the only aspect that needs to be seen is, what are the directions in the order of which violation is alleged. I have already reproduced Para 16 of the order of the Tribunal encompassing the directions. In Para 16 (ii), the Tribunal refers to the words “*arrears of pay*”. The said words are qualified by the words “*wherever applicable*”. At the same time Para 16 (iv) makes it specifically clear that promotions, whether past or future, shall be only on notional basis. The submission advanced by Mr. Rajeev Sharma is appealing. In any case, if the arguments of the learned counsel for the petitioners are to be accepted and petitioners are paid arrears, then the directions in Para 16(iv) would lose its relevance. The action of the respondents fixing the pay of the petitioners on notional basis cannot be faulted. Further to initiate any action under the Contempt of

Courts Act, 1971, it necessarily has to be on a finding that the action of the respondents, not complying the order of the Tribunal as upheld by this court is wilful, intentional and deliberate which cannot be the case here.

I do not see any merit in the contempt petition. The same is closed. Notices issued are discharged.

V. KAMESWAR RAO, J

MARCH 08, 2018/jg