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

+ **CONT.CAS(C) 857/2013 & CM APPL. 14654/2014**

SH S R TIWARI

..... Petitioner

Through Mr. Anshu Mahajan and Mr.Karan
Arora, Advocates.

versus

**SHRI ARVIND GUJRAL CHIEF EXECUTIVE OFFICER BSES
YAMUNA POWER LIMITED**

..... Respondents

Through Mr. Sandeep Prabhakar, Mr. Amit
Kumar, Mr. Vikas Mehta and
Mr.Ishaan Lamba, Advocates.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **18.02.2020**

The instant contempt petition came to be filed alleging wilful disobedience of the directions given by the Id. Single Judge on 23.08.2011 in W.P.(C) 4589/2002 , which came to be reviewed on 08.03.2013.

The substantive para thereof reads as follows:

“For the aforementioned reason, this Court finds that the impugned order dated 14th March 2000 issued by the AGM and the decision of the Board conveyed to him by the letter dated 30th May 2001 are unsustainable in law and are hereby set aside. The Petitioner having retired in the meanwhile would not be entitled to any arrears of pay. However, his retired, pensionary and other benefits will be re-worked on the above basis. If the Petitioner has been denied any promotion as a result of the impugned orders, those promotions will be granted to the Petitioner from the respective dates when they were due to him. The arrears of retiral and pensionary benefits

will be paid to the Petitioner within a period of eight weeks together with simple interest @9% per annum from the date of the impugned order, i.e., 14th March 2000 till date of payment. Failure to make such payment within a period as directed will entail penal simple interest @12% per annum for the period of delay.”

During the course of hearing, ld. counsel contends that the grievance of the petitioner is limited to the extent of the promotion(s) and the effect thereof having been not given effect to. In the reply filed, the respondents have averred as follows:

“Without prejudice to above it is respectfully submitted that any claim towards the Time Bound Promotion Scale is a separate cause of action and can only be agitated by way of a separate Writ Petition. It may also be pertinent to point out that several employees of the erstwhile DVB have filed petitions claiming Time Bound Promotion Scale (for short ‘TBPS’) which are currently pending disposal before this Hon’ble Court. It is submitted that the Petitioner cannot use the contempt proceedings to pressurize the respondent to grant reliefs which are not the subject matter of the proceedings for which the contempt petition has been filed. The same is an abuse of the process of law. Therefore the present application is not maintainable and liable to be dismissed.”

It is submitted that the Petitioner has suppressed and concealed material information from this Hon’ble Court while filling the contempt petition. The Petitioner had deliberately concealed that three more vigilance cases in addition to the matter which is a subject matter of the present proceedings were initiated against him for major penalty proceedings. In all these vigilance cases, the penalty was imposed upon him and therefore as per office order dated 23.07.1997, Para 7 (iv) the cases of the persons who were awarded punishment had to be considered after the punishment period was over. The candidature of the petitioner remained under cloud since 1991 to 18.08.2001 in vigilance case bearing no. VC-66-67/1991-

vig, i.e. the date on which the penalty was over. Thereafter, in the vigilance case bearing no. VC-564-568/1992-vig, the candidature remained under cloud since w.e.f. 1992 to 12.05.2002 i.e. the date on which the penalty was over. In another vigilance case bearing no. VC-73-75/1999- vig, the order of penalty was reduced to Censure vide order dated 24.09.2002. As a result of this penalty, his candidature remained under cloud since 1991 to 24.09.2002. In another vigilance case, which was the subject matter of the present writ petition, the penalty order was quashed by this Hon'ble Court. It is submitted that when he was involved in three other vigilance cases initiated for major penalty proceeding, he was not considered fit for the grant of TBPS by the Respondent Management keeping in view his previous record. The last penalty was imposed upon him on 24.09.2002 and he retired from the service on 30.09.2002. It is submitted that in view of his tainted background and aforementioned vigilance cases he was not allowed the Time Bound Promotion Scale. The Petitioner is not entitled to get the Time Bound Promotion Scale w.e.f. 14.12.1997 as alleged by him or at all. Therefore the present application is not maintainable and liable to be dismissed."

Why any due promotion was not granted to the petitioner, the foregoing paras in the reply speak for itself. In the submissions of the Id. counsel for the petitioner, the time bound promotional scale could not be denied to the petitioner for the reasons as have come to be disclosed by the respondents for the first time in the reply. Let it be so. The fact remains, whether the petitioner was actually entitled to any promotion(s) or not, cannot be gone into in the instant contempt proceedings. The specific stand taken by the respondents invites adjudication by the appropriate Court/Forum. Suffice to say, the scope of the contempt proceedings is limited.

Taking note of the totality of facts and circumstances, the instant contempt proceedings are dropped. Liberty is however reserved to the petitioner to agitate any of its claims before the appropriate Court/Forum in accordance with law. Taking note of the fact that the contempt petition is pending since the year 2013, in the event, the petitioner approaches the concerned Court/Forum within one month from today, the question of delays and laches or condonation of delay, shall not come in the way.

Petition stands disposed of accordingly.

A. K. CHAWLA, J

FEBRUARY 18, 2020

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