



2024:DHC:4907



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **CONT.CAS(C) 303/2020 & CM APPL. 21701/2020****KALPANA DUDEJA**

..... Petitioner

Through: Mr. Manish Sharma and Mr.
Abhishek Goyal, Advs. with
petitioner in person.
M: 9560478111
Email: abhishekgoyaladv@gmail.com

versus

JAIDEEP KUMAR MISHRA & ORS.

..... Respondents

Through: Mr. Gaurav Sharma, Adv. with Mr.
Paranjay Tripathi, Mr. Rajesh Raj and
Mr. Amitabh K. Mishra, Advs.
Email: gaurav1402@gmail.com

CORAM:**HON'BLE MS. JUSTICE MINI PUSHKARNA****J U D G M E N T****02.07.2024****MINI PUSHKARNA, J:**

1. The present petition has been filed alleging willful disobedience of the directions, as contained in the order dated 22nd October, 2019, passed by Division Bench of this Court, in *W.P. (C) 8015/2016*. By order dated 22nd October, 2019, the learned Division Bench had directed the respondents to comply with the remaining portion of the judgment dated 30th April, 2015 passed by the Central Administrative Tribunal ("CAT"), in *TA No. 04/2014* and release to the petitioner, entire arrears as payable to her, till her reinstatement on 15th June, 2015. The learned Division Bench had also



directed the respondents to pass appropriate orders in respect of consequential benefits, including promotion, not later than three months from the date of passing of the said order.

2. The facts in brief, are as follows:

2.1 Disciplinary proceedings were conducted against the petitioner by the respondent, i.e., National Institute of Electronics and Information Technology, i.e., 'NIELIT' ("respondent-organization"). The petitioner was imposed with major penalty of removal from service. In appeal, the Appellate Authority of the respondent-organization, reduced the penalty of removal from service to compulsory retirement, vide order dated 21st April, 2010.

2.2 The petitioner challenged the aforesaid action of the respondent-organization by filing a writ petition before this Court, being *W.P.(C) No. 6354/2010*. The said petition was transferred to the CAT vide order dated 11th March, 2014 passed by this Court. Thus, the petition filed by the petitioner was registered by the learned CAT as *TA No. 04/2014*.

2.3 By way of judgment dated 30th April, 2015, the learned CAT allowed the petition, thereby directing the respondent-organization to reinstate the petitioner in service, with all consequential benefits. The learned CAT further directed that there was no need for any fresh enquiry against the petitioner, considering the fact that the petitioner had been subjected to two enquiries over a period of nine years.

2.4 Thereafter, the petitioner was reinstated on 15th June, 2015. However, she was not given any consequential benefits relating to her promotion, salary or dues, pursuant to which the petitioner filed a contempt petition being *CP No. 295/2016* before the learned CAT.



2.5 Being aggrieved by the judgment dated 30th April, 2015 passed by the learned CAT, the respondent-organization challenged the same by way of filing a writ petition, being *W.P.(C) 8015/2016* before this Court. By order dated 22nd October, 2019, the learned Division Bench dismissed the said writ petition, thereby upholding the judgment passed by the learned CAT.

2.6 Against the order dated 22nd October, 2019 passed by the learned Division Bench, the respondent-organization approached Supreme Court by way of *SLP (C) 5385/2020*. However, the said petition was dismissed by the Supreme Court vide order dated 17th March, 2020.

2.7 In the meanwhile, the respondent-organization paid a sum of ₹ 17,37,482/- to the petitioner, as net amount payable after statutory deductions, by a sanction order dated 23rd January, 2020.

2.8 Since, as per the petitioner, the respondent-organization failed to fully comply with the directions given in the order dated 22nd October, 2019 passed by the learned Division Bench, and had not given the consequential benefits to the petitioner, the present petition came to be filed.

3. On behalf of the petitioner, following submissions have been made:

3.1 Learned counsel appearing for the petitioner relies upon the order dated 25th June, 2020 passed in the present proceedings, wherein, submissions were made on behalf of the respondents that certain deliberations were required to be carried out at the ministerial level with respect to the pending issues pointed out by the petitioner.

3.2 Learned counsel also draws the attention of this Court to the order dated 8th October, 2020, wherein, the respondent had been directed to keep the relevant records available at the time of hearing.

3.3 Learned Counsel also relies upon the order dated 27th January, 2021,



wherein, directions had been given to the respondents to respond to the averments made by the petitioner that her colleagues of equal seniority, have either been promoted, or are receiving higher emoluments than her. However, it is pointed out that no response thereto has been filed by the respondents.

3.4 The promotions due to the petitioner from the date of her joining the service, with upgraded wages and ancillary benefits, keeping her seniority, have been denied to her. Only one promotion has been granted to the petitioner in the year 2019, w.e.f. 1st January, 2012, from the post of Finance Officer to Assistant Director. However, the petitioner is entitled to four more promotions.

3.5 Officers, who were junior to the petitioner, have been promoted. Therefore, the petitioner ought to be put at par with her juniors. Attention of this Court has been drawn to Para 8 of the petition, wherein, instances of junior officers, who have been promoted, have been given. Thus, it is submitted that there are nine junior officers, who have been given promotions, which the petitioner has been denied.

3.6 The Division Bench of this Court had specifically directed that promotion of the petitioner had to be considered by the respondent-organization and appropriate orders are to be passed towards the same. Thus, promotion was not merely a consequential benefit that had to be given to the petitioner.

3.7 Petitioner had joined the respondent-organization in the year 1992 in the post of Finance Officer. As per the Old Promotion Policy, her first promotion was due in the year 1999 from the post of Finance Officer to the Assistant Director. The petitioner was, however, victimized, denied



promotion, and was continued on the same post. The petitioner claims promotion since the year 1999, or in the alternative, since the year 2002, when the new Promotion Rules were adopted.

3.8 The next promotion due to the petitioner was in the year 2008 from the post of Assistant Director to Deputy Director. In the year 2012, her third promotion was due from the post of Deputy Director to Joint Director. Finally, in the year 2016, she was entitled to her fourth promotion from Joint Director to Additional Director. Further, in routine, the petitioner was entitled to get one more promotion in the year 2020. The guidelines for Promotion Policy were revised by the respondents in the year 2002, which also entitled the petitioner to all the aforesaid promotions.

3.9 The enquiry and the findings against the petitioner were quashed by the learned CAT vide judgment dated 30th April, 2015. The petitioner became entitled to all benefits, as ordered by the learned CAT on 30th April, 2015 itself. The Division Bench of this Court had never stayed the operation of the judgment dated 30th April, 2015 passed by the learned CAT.

3.10 The petitioner has been denied her promotions illegally and unjustifiably.

3.11 The petitioner has superannuated on 31st March, 2024. Thus, she is entitled to all the financial benefits as per the promotions due to her.

3.12 The petitioner made numerous representations to the respondent-organization, wherein, she requested the respondent to comply with the remaining part of the judgment dated 30th April, 2015 passed by the learned CAT, and provide her the consequential benefits, that she is entitled to.

3.13 The respondents by their conduct of continuous violation of the directions and non-compliance, evidently, have no regard or respect for the



judgment passed by this Court. The respondents are deliberately and consciously violating the directions and not complying with the same. Thus, the respondents are guilty of contempt of this Court.

4. On behalf of the respondents, the following submissions have been made:

4.1 The order dated 22nd October, 2019 passed by this Court has been complied with, in entirety. The respondent-organization has released all the arrears of the petitioner from 2009 onwards till her reinstatement in the year 2015. Pursuant to the order of this Court, the petitioner has been paid a sum of ₹ 39,73,965/-, towards arrears of her salary upon her reinstatement, arrears of subsistence allowance, arrears of LTC encashment and medical reimbursement.

4.2 The petitioner has also been duly considered for promotion as per the screening criteria contained in the Promotion Policy of the respondent-organization. The Screening Committee met on 21st July, 2020 and after duly considering the Annual Performance Appraisal Reports (“APARs”), recommended the petitioner for consideration. After several requests, the petitioner appeared for interview before the Selection Committee on 27th July, 2020. The Selection Committee found the petitioner to be fit for promotion from Level 7 to Level 9 and promotion order dated 28th July, 2020, was issued to her. As per the said order, petitioner has been promoted to the post of Assistant Director, w.e.f., 01st January, 2012.

4.3 The petitioner was again considered for promotion from Level 9 to Level 11 on 06th August, 2020 and 11th August, 2020. However, based on the available APARs of the petitioner, the Screening Committee did not find the petitioner fit for consideration, due to adverse remarks in her APARs.



4.4 The respondent-organization was directed to grant only due promotions to the petitioner. Since the petitioner has been unable to meet the requisite minimum benchmark grading, as per the requirement of the Promotion Policy of the respondent-organization, the petitioner has not been granted, any further promotions, as she is not entitled to the same.

4.5 As per the Promotion Policy of the respondent-organization, a candidate must receive a minimum grading of 'Very Good' in each of their APARs under consideration, and must not have any negative remarks in the said APARs. Since the petitioner did not meet the said criteria, she is not entitled for the promotions, as claimed by her.

4.6 The petitioner has not challenged the validity of her APARs till date. Even otherwise, the validity of the APARs cannot be challenged in the present proceedings. Further, the petitioner has also not challenged the decisions of the Screening Committee and Selection Committee, where the petitioner was not considered fit for further promotion.

4.7 The prayers made by the petitioner for further promotion are beyond the scope of the jurisdiction of the present court. All the financial benefits have already been granted to the petitioner. Further, the petitioner has already been given promotion, when she was found fit for the same. Thus, the present petition ought to be dismissed.

5. I have heard learned counsels for the parties and have perused the record.

6. At the outset, this court notes that by judgment dated 30th April, 2015 passed by the learned CAT in *(TA) Transfer Appl./04/2014*, the petition filed by the petitioner was allowed, wherein, the petitioner was directed to be reinstated in service with all consequential benefits, in the following



manner:

“xxx xxx xxx

44. In view of the above facts and circumstances of the case, we are of the considered view that the impugned report of the Enquiry Officer, order of the Disciplinary Authority and that of the Appellate Authority are not sustainable. Accordingly, they are quashed and set aside. Consequently, we allow this OA and **direct the Respondents to reinstate the Applicant in service with all consequential benefits within a period of one month from the date of receipt of a copy of this order.** In normal circumstances, we would have given liberty to the Respondents to hold fresh enquiry against the Applicant. However, taking into consideration of the background in which the charges have been issued and the fact that the Applicant has already been subjected to two enquiries spanning over a period of nearly nine years, any fresh enquiry against the Applicant will not be in the interest of justice. There shall be no order as to costs.

xxx xxx xxx”

(Emphasis Supplied)

7. The aforesaid judgment passed by the learned CAT was reaffirmed and upheld by learned Division Bench of this Court vide order dated 22nd October, 2019, passed in *W.P.(C) 8015/2016*, wherein, the learned Division Bench categorically directed the respondent-organization to comply with the judgment of the learned CAT, and release entire arrears to the petitioner, including her salary till the date of her reinstatement. The learned Division Bench further directed that appropriate orders shall be passed by the respondent-organization qua other consequential reliefs, including the promotions due to the petitioner herein. Thus, the learned Division Bench, directed as follows:

“xxx xxx xxx

44. While dismissing the petition and vacating the interim order passed on 9th September, 2016 **the Court directs that the Petitioner will now comply with the remaining part of the impugned order of the CAT and release to Respondent No.1, not later than 30th**



November, 2019 the entire arrears of the amounts payable to her as a result thereof, including her salary from September 2009 onwards till her reinstatement. As regards the other consequential reliefs including the promotions due to Respondent No.1, the appropriate orders shall be passed by the Petitioner not later than three months from today.”

(Emphasis Supplied)

8. As regards the arrears payable to the petitioner, the respondent-organization has categorically stated that all the arrears of the petitioner from 2009 onwards, till her reinstatement in 2015, and other arrears, due and payable to the petitioner, have already been released. Thus, the respondent-organization has stated as follows:

“xxx xxx xxx

4. It is submitted that the order dated 22.10.2019 passed by this Hon'ble Court in W.P.(C) No. 8015 of 2016 has been complied by the NIELIT in its entirety. The NIELIT has released all the arrears of the petitioner from 2009 onwards till her reinstatement in 2015. Pursuant to the aforementioned order dated 22.10.2019 the NIELIT has paid a sum of Rs. 39,73,965.00/-. The said amount has been released by the NIELIT in the following manner:

Sl. No.	Date	Description	Payment in Rs.
1.	23.01.2020	Arrears of Salary upon reinstatement w.e.f. 21.10.2009	30,14,314.00
2.	24.07.2020	Arrears of Subsistence Allowance	22,989.00
3.	27.07.2020	EL and HPL balance credited upon reinstatement	
4.	27.10.2020	Arrears of LTC encashment upon promotion with effect from 01.01.2012	28,304.00
5.	11.11.2020	Arrears of salary and medical reimbursement upon promotion with effect from 01.01.2012	9,08,358.00
Total			39,73,965.00/-
<u>(Rupees Thirty-Nine Lakh Seventy-Three Thousand Nine Hundred Sixty-Five Only)</u>			

xxx xxx xxx”

(Emphasis Supplied)



9. As regards the issue of promotion, the categorical stand of the respondent-organization is that the petitioner has already been granted due promotion vide Promotion Order dated 28th July, 2020 from Level 7 to Level 9. Thus, the petitioner has been promoted to the post of Assistant Director, w.e.f. 01st January, 2012.

10. Accordingly, with respect to grant of promotion to the petitioner for the post of Assistant Director (Level-9), the respondent-organization, in its affidavit, has stated as follows:

“xxx xxx xxx

18. Action Taken on Promotions:

That based on the report/recommendations of the Internal Committee and taking into account the advice of the administrative ministry, applicable Govt. Rules, Screening/ Selection Committees were constituted by the competent authority on 17th July 2017 to consider the promotion case of Smt. Dudeja as on 1.1.2009. The Screening Committee met on 21st July 2020 and the recommended as under:

• The Screening Committee [Level- 1] in its meeting held on 21st July 2020 has recommended her case as Screened-In as on 01.01.2012 and accordingly for interview before the Selection Committee, as per eligibility criteria and Promotion Scheme of NIELIT.

19. That subsequently, meeting of the Selection Committee [level-2] was fixed on 27th July 2020. The same was conveyed to Smt. Dudeja vide letter dated 23rd July 2020. Smt. Dudeja, vide reply dated 24th July 2020 to email dated 23rd July 2020 declined to appear before the Selection Committee.

20. That however, a request was again made to Smt. Dudeja vide email dated 24th July 2020 to appear before the Selection Committee in the meeting scheduled on 27th July 2020 but vide mail dated 25th July 2020, she again declined to appear before the Selection Committee. Further, a second reminder dated 27th July 2020 was issued to Smt. Dudeja giving her a last opportunity to appear in the interview before the selection committee failing which it would be construed that she is not interested in her due promotion and the



committee would take decision accordingly. To this, Smt. Dudeja replied “Since through my previous communications, I have explained my stand for not coming for the interview but since repeated emails are being received from you under instructions of the competent authority (which has not been disclosed in any of the letter and email sent by you), I am ready and willing to come for the interview under protest subject to the outcome of the contempt petition filed by me before the Hon’ble High Court of Delhi.”

21. That finally Smt. Dudeja appeared before the selection committee on 27th July 2020. The selection committee found Smt. Dudeja fit for promotion from Level-7 to Level-9 w.e.f 1.1.2012. Accordingly, promotion order dated 28th July 2020 was issued to Smt. Dudeja vide email dated 28th July 2020 (annexed as Annexure-R-7). Smt. Dudeja joined on the new post of Assistant Director (Level-9) on 31st July 2020. In her promotion order, Smt. Dudeja was requested to exercise the option to get the pay fixed from the date of promotion or from the date of next increment (DNI) within one month from the date of issue of receipt of promotion order (as per FR-22 Rule). Accordingly, her arrears would be released after making due drawn statement.

xxx xxx xxx”

(Emphasis Supplied)

11. As regards further promotion claimed by the petitioner, it is the clear stand of the respondent-organization that on the basis of the adverse remarks in her APARs, and the petitioner not meeting the requisite minimum benchmark grading required as per the Promotion Policy of the respondent-organization, the petitioner is not entitled to any further promotions.

12. With respect to the case of the petitioner for further promotion, the respondent-organization has stated as follows:

“xxx xxx xxx

22. That after joining on new post on 31st July 2020(w.e.f 1.1.2012), Smt. Dudeja again became due for promotion from Level 9 to Level 11 w.e.f 1.1.2016 (residency period being 4 years). Accordingly following actions were taken:

Action Taken	Date
Approval was solicited from the competent	30 th July 2020



authority to consider the case of promotion of Smt. Dudeja from Level-9 to Level-11.	
Screening committee was constituted by the competent authority for considering her case of promotion from Level 9 to Level 11 as on 1.1.2016 onwards.	31 st July 2020
After getting approval from the competent authority, vigilance clearance was sought from the Vigilance Officer for processing the case of Smt. Dudeja for promotion from Level-9 to Level-11.	4 th August 2020
<u>The meetings of the Screening Committee for considering the case of promotion of Smt. Dudeja from Level-9 to Level-11 were held on 6th & 11th August 2020. The committee considered her for promotion from Level-9 to Level-11 as on 01.01.2016, 01.01.2017, 01.01.2018 and 01.01.2019 based on the available APARs/ACRs and submitted its report with recommendation, wherein, Smt. Dudeja has been screened out for all the aforesaid years due to adverse remarks in her APARs/not meeting the requirement of minimum percentage in APAR gradings.</u>	6 th & 11 th August 2020

xxx xxx xxx”

(Emphasis Supplied)

13. It has been emphasized by the respondent-organization that the case of the petitioner for further promotion was considered. However, in view of the negative remarks in her APARs, the petitioner could not be granted further promotion. Thus, the respondent-organization has stated as follows:

“xxx xxx xxx

6. In the case of Petitioner same thing happened. **By going through the APARs that were made available by herself one would easily find that except a few APARs after appointment in 1992 her APARs are with negative remarks and unauthorized leaves because of which by any way of calculation and consideration she could not make a way for the desired and stipulated promotion. It is pertinent to mention that it is not only after joining the Delhi**



Centre in December, 2005 where she is working presently but prior to that also in previous Centre at Gorakhpur, the Petitioner's APAR and service records loudly speak about her conduct and performance there that had led her to face Departmental Enquiry. Therefore, it's blatantly wrong and vehemently denied any malafide on the part of the Respondent's institution NIELIT against the Petitioner. **Rather, it is the conduct and performance of the Petitioner which could not fetch desired marks/grade, remarks in her APARs whether in previous centre Gorakhpur prior to December 2005 and in Delhi Centre after December, 2005. Every employee has to earn and obtain the requisite mandates to claim the progression and promotion in service and the petitioner herein has apparently failed generally.**

7. That the Respondent's institution NIELIT while considered her for promotion after Hon'ble Court's order, the Respondents have relied on the very APARs made available by the Petitioner only that too are of the period prior to the joining Delhi Centre.

8. That for the duration of litigation period from the year 2006 i.e. after joining Delhi Centre, to the year of Petitioner's reinstatement in 2015, the Respondent's institution NIELIT have not been in possession of APARs or any service records of the Petitioner available as in the year 2014 all the records of the Petitioner were destroyed in the major file incident at Chandigarh Centre nor even the Petitioner made available any record for that litigation period. Therefore, there is no question of any malafide arises as the Respondents have not considered any record for the litigation period for her promotion.

9. **That in absence of the service records, as mandated in the DoPT guidelines the Respondent's institution NIELIT have relied upon whatever records available viz APARs submitted by the Petitioner and accordingly processed her case for promotion with great value and regards for the Hon'ble Court without any iota of mischief or tricks or malafide as alleged by the Petitioner.**

xxx xxx xxx "

(Emphasis Supplied)

14. As regards the contention of the petitioner with respect to other employees, who were junior to her, and have been granted promotion, the stand of the respondent-organization, is as follows:



“xxx xxx xxx

13. The nine employees referred by the Petitioner had joined the NIELIT organization in different cadres/posts, at different period and at different Centres and have been considered for promotions on the basis of the marks they got in their Annual Performance Appraisal Reports [APARs] for the respective years and thereupon promoted because of their performance before the Selection Committees for the respective years.....”

(Emphasis Supplied)

15. During the pendency of the present petition, the petitioner had made a representation dated 18th October, 2023 regarding her promotions. The said representation was duly considered by the respondent-organization, and pursuant thereto, a compliance affidavit was filed, in the following terms:

“xxx xxx xxx

4. It is submitted that on 13.12.2023 this Hon’ble court was brought to notice of the fact that a representation of the petitioner dated 18.10.2023 seeking promotion was being considered by NIELIT. Thereafter, this Hon’ble Court vide order dated 13.12.2023 directed that the said representation of the petitioner should be duly decided and a compliance affidavit in this regard should be filed by the concerned official of NIELIT. It is humbly submitted that the present affidavit is being filed in compliance of the aforesaid order dated 13.12.2023.

5. **It is submitted that pursuant to the aforementioned order dated 13.12.2023 passed by this Hon’ble Court, a committee comprising Executive Director NIELIT Delhi Centre, Registrar NIELIT, and Registrar, STPI met on 05.03.2024 to consider the promotion of the petitioner from Level 9 to Level 10. The representation of the petitioner dated 18.10.2023 was duly considered by the said committee as per the screening criteria contained in Modified Person Oriented Promotion Policy. Copy of the Modified Person Oriented Promotion Policy is annexed herewith as ANNEXURE 1.**

6. **It is submitted that as per the Modified Person Oriented Promotion Policy the minimum criteria for considering promotion is that “Very Good” grading should be received by the concerned candidate in all years during the minimum residency period of three years. However, in the present case for the year 2020 the petitioner has received “Good” grading, which is lower than the**



requisite “Very Good” rating. Further, the petitioner has also received negative remarks for the years 2019 and 2020.

7. Therefore, in view of the fact that the petitioner has failed to receive minimum benchmark grading for promotion and has also received negative remarks in her APARs for the years 2019 and 2020, the committee recommended the petitioner to be screened out. Copy of the minutes of the screening committee meeting held on 05.03.2024 is annexed herewith as ANNEXURE 2.

8. It is humbly submitted that the aforementioned decision dated 05.03.2024 has been taken by the screening committee strictly as per the Modified Person Oriented Promotion Policy as in the case of all other employees of the NIELIT. Therefore, the selection committee has strictly adhered to the aforesaid policy, because a departure from the said policy only for the sake of granting promotion to the petitioner would lead to inconsistency and unfairness.

xxx xxx xxx”

(Emphasis Supplied)

16. Perusal of the aforesaid affidavit filed on behalf of the respondents, clearly shows that the case of the petitioner for further promotion, was duly considered by the respondent-organization, in terms of its Promotion Policy. As per the said Promotion Policy, the minimum criteria for considering promotion, is ‘Very Good’, in all years during the minimum residency period of three years. It is apparent from reading of the aforesaid affidavit that the petitioner had received ‘Good’ grading for the year 2020, which is lower than the requisite ‘Very Good’ rating. Further, the petitioner has received negative remarks for the years 2019 and 2020. Thus, as per the stand of the respondent-organization, since the petitioner failed to receive the minimum benchmark grading for promotion, and had also received negative remarks in her APARs, she was not entitled for further promotion.

17. Considering the aforesaid facts and circumstances of the present case, it is manifest that the respondent-organization has released the arrears due and payable to the petitioner, in terms of its calculations. Further, the



respondent-organization has also considered the case of the petitioner for grant of promotion to her in terms of its Promotion Policy. Thus, when the respondent-organization has taken due steps in compliance of the directions passed by Division Bench, this Court would not examine the merits of the compliance done by the respondents in contempt proceedings. If the petitioner has any grievance as regards the action taken by the respondent, the same would constitute a fresh cause of action. The grievance of the petitioner, as regards the merits of the action taken by the respondent in compliance of directions issued, cannot be subject matter of adjudication in contempt proceedings.

18. This Court notes that the directions, as issued by the learned CAT, were to the extent of granting reinstatement to the petitioner with all consequential benefits. The said directions were reiterated by the learned Division Bench, wherein, it was directed that all the arrears shall be payable to the petitioner, along with consequential reliefs, including promotions due to the petitioner. In compliance of the aforesaid directions, the petitioner has already been reinstated and arrears have been released to the petitioner. Further, the case of the petitioner for promotion was also considered by the respondent and the petitioner has been granted one promotion, when she was found fit for the same. However, as regards further promotions, as claimed by the petitioner, the same have not been granted, since it is the clear stand of the respondent-organization that the petitioner does not meet the minimum benchmark and criteria for promotion, as per its Promotion Policy.

19. It is evident that the only direction given by learned Division Bench and learned CAT was to grant consequential benefits to the petitioner, including the promotion due. There was no specific direction or finding as



regards the entitlement of the petitioner for promotion. Thus, when the respondent has considered the petitioner for promotion as per its policy, this Court in contempt proceedings cannot enlarge the scope and examine matters, which are not within the extent of directions contained in the order, of which compliance is sought. This Court cannot travel beyond the four corners of the order, which is alleged to have been violated, or pass directions which are not explicit in the order, alleged to be in contempt.

20. Thus, holding that only such directions, which are plainly self evident, ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same, Supreme Court, in the case of *Snehasis Giri and Others Versus Subhasis Mitra*, 2023 SCC OnLine SC 107, has held, as follows:

“xxx xxx xxx

9. Furthermore, there is merit in the respondents' submission that the court, in contempt proceeding cannot enlarge its scope and examine matters which are not part of its remit, i.e. extent of the direction or orders contained in the judgment of which contempt being alleged. In fact, in the decision in Sudhir Vasudeva (supra), it was held as follows:

*“19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. **The Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident***



ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or wilful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. The Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenching upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the Bar, namely, *Jhareswar Prasad Paul v. Tarak Nath Ganguly* [(2002) 5 SCC 352 : 2002 SCC (L&S) 703], *V.M. Manohar Prasad v. N. Ratnam Raju* [(2004) 13 SCC 610 : 2006 SCC (L&S) 907], *Bihar Finance Service House Construction Coop. Society Ltd. v. Gautam Goswami* [(2008) 5 SCC 339] and *Union of India v. Subedar Devassy PV* [(2006) 1 SCC 613].”

xxx xxx xxx

11. Furthermore, this court, in lawful exercise of contempt jurisdiction, cannot examine the merits of a decision, whether the state or the madrasa's stand that any of the petitioners is entitled to the benefits of being treated as an employee, having regard to the concerned rules and regulations. In *J.S. Parihar v. Ganpat Duggar*³ this court explained the limited scope of contempt proceedings, as follows, in the facts of the case:

“6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority



list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. **It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum.** The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.”

xxx xxx xxx

13. It is thus, apparent, that if this court were to pronounce upon the merits of the respondents' position, it would necessarily have to consider the facts of each case, and decide whether the stand of the alleged contemnors - wherever a decision adverse to the petitioners is taken, is correct on its merits. That exercise, plainly is not admissible in proper exercise of contempt jurisdiction.

xxx xxx xxx”

(Emphasis Supplied)

21. Consideration, for promotion to the next higher post, cannot be subject matter of a contempt petition. If the petitioner has any grievance in this regard, the petitioner is entitled to approach appropriate forum for seeking such relief, as she is entitled in law. (See: ***Ashok Kumar Aggarwal Versus Sumit Bose and Another, (2014) 13 SCC 215***)
22. Similarly, Supreme Court in the case of ***Union of India and Others***



Versus Colonel Ran Singh Dudee, (2018) 8 SCC 53, has held as follows:

“xxx xxx xxx

24. The first question that arises is regarding the significance of the expression “consequential benefits” as used in the Order dated 20-11-2013. The matter which was directly in issue and under consideration was the correctness and validity of General Court Martial proceedings. While annulling the findings and effect of such General Court Martial proceedings, the idea was to confer those benefits which the officer stood denied directly as a result of pendency of such proceedings. Such benefits would therefore be those which are easily quantifiable, namely, those in the nature of loss of salary, emoluments and other benefits. But the expression cannot be construed to mean that even promotions which are strictly on the basis of comparative merit and selection must also stand conferred upon the officer. It is true that as a result of pendency of the General Court Martial proceedings the respondent was kept out of service for nearly nine years and as such his profile would show inadequacy to a certain extent. On the other hand, the Department was also denied of proper assessment of the profile of the respondent for those years. The correct approach in the matter is the one which was considered by this Court in *K.D. Gupta v. Union of India* [*K.D. Gupta v. Union of India, 1989 Supp (1) SCC 416 : 1989 SCC (L&S) 448*] as under : (SCC pp. 420-21, para 8)

“8. The respondents have maintained that the petitioner has not served in the appropriate grades for the requisite period and has not possessed the necessary experience and training and consequential assessment of ability which are a precondition for promotion. The defence services have their own peculiarities and special requirements. The considerations which apply to other government servants in the matter of promotion cannot as a matter of course be applied to defence personnel of the petitioner's category and rank. Requisite experience, consequent exposure and appropriate review are indispensable for according promotion and the petitioner, therefore, cannot be given promotions as claimed by him on the basis that his batchmates have earned such promotions. Individual capacity and special qualities on the basis of assessment have to be found but in the case of the petitioner these are not available. We find force in the stand of the respondents and do not accept the petitioner's contention that he can be granted promotion to the higher ranks as claimed by



him by adopting the promotions obtained by his batchmates as the measure.”

xxx xxx xxx”

(Emphasis Supplied)

23. Law is well settled that a court exercising contempt jurisdiction is not entitled to enter into questions, which have not been dealt with, and decided in the judgment and order, violation of which is alleged. A contempt court does not function as an original or appellate court for determination of disputes between the parties. It is not permissible for the court to issue any supplementary or incidental directions in contempt jurisdiction, which are not to be found in the original judgment and order. A contempt court is only concerned with the willful or deliberate non-compliance of the directions issued in the original judgment and order. (*See: Jhareswar Prasad Paul and Another Versus Tarak Nath Ganguly and Others, (2002) 5 SCC 352 and V. Senthur and Another Versus M. Vijayakumar, IAS, Secretary, Tamil Nadu Public Service Commission and Another, 2021 SCC OnLine SC 846*)

24. In view of the aforesaid detailed discussion, no merit is found in the present contempt petition. However, the petitioner is at liberty to seek appropriate remedies, in accordance with law, with regard to her grievances.

25. Accordingly, the present petition is dismissed, along with the pending application.

**(MINI PUSHKARNA)
JUDGE**

JULY 2, 2024
Ak/Au