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

+ **CONT.CAS(C) 130/2013 & CM APPL. 10725/2023**

**SARVJEET SINGH**

..... Petitioner

Through: Mr. Arvind Kumar Sharma and  
Mr. A. Sharma, Advocates

versus

**PRANAY SAHAY AND ORS.**

..... Respondents

Through: Mr. Ruchir Mishra, Mr. Sanjiv Kr.  
Saxena, Mr. Mukesh Kr. Tiwari, Ms.  
Poonam Shukla & Ms. Reba Jena  
Mishra, Advs. M: 8368422800 For  
UOI.

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***Date of Decision: 15<sup>th</sup> January, 2024***

**CORAM:**

**HON'BLE MS. JUSTICE MINI PUSHKARNA**

### **J U D G M E N T**

#### **MINI PUSHKARNA, J: (ORAL)**

1. The present contempt petition has been filed alleging non-compliance of the judgment dated 01<sup>st</sup> September, 2011 passed in *W.P.(C) 2293/2011* wherein the court had directed the respondents to reinstate the petitioner with grant of 50% back wages with effect from 03<sup>rd</sup> September, 1993 till reinstatement with consequential benefits, i.e. continuity in service, etc.

2. Facts of the case are that the petitioner was appointed as Sub-Inspector with the respondent on 01<sup>st</sup> February, 1986. He was placed under suspension on 07<sup>th</sup> September, 1990 and thereafter, dismissed from service on 25<sup>th</sup> June, 1991 on the basis of an enquiry. Subsequently, the petitioner



filed an appeal before respondent no. 4, challenging his removal.

3. The petitioner was acquitted in the criminal case on 03<sup>rd</sup> September, 1993. Thus, by order dated 31<sup>st</sup> March, 2008 passed in *W.P.(C) No. 4560/1993*, the petitioner herein was directed to be re-heard by giving an opportunity of hearing to the petitioner and by passing a speaking order.

4. It is the case of the petitioner that the petitioner again filed a writ petition being *W.P.(C) No. 7817/2008*, wherein the court directed the respondents to decide the petition, treating the same as a revision petition. Subsequently, the petitioner was reinstated on 28<sup>th</sup> August, 2010 to the post of Senior Inspector.

5. Pursuant to his reinstatement, the petitioner made a representation for back wages as well as for counting of past service and seniority.

6. The petitioner herein then filed a writ petition being *W.P.(C) No. 2293/2011*. By order dated 01<sup>st</sup> September, 2011, the writ petition filed on behalf of the petitioner was allowed and following directions were passed:

*"20. In the fact and circumstances of this case, we find that the principle 'No work. No pay' would not apply. We are of the firm opinion that the petitioner on his acquittal by a criminal court on 3.9.1993 became eligible for reinstatement) and because of the obstinate stand of the respondents, petitioner had to suffer for no fault of his and thus, we direct the respondents to grant 50% of the back wages to the petitioner w.e.f. 3.9.1993 till reinstatement with consequential benefits i.e. continuity in service, etc. within twelve weeks."*

7. It is the case of the petitioner that though the petitioner was granted 50% back wages and was reinstated pursuant to the directions passed by the court, however, the consequential benefits of promotion have not been granted to the petitioner.

8. It is the case of the petitioner that he was granted notional promotion



as Deputy Commandant from the year 2007 along with his immediate junior A.K. Shukla. However, while his junior A.K. Shukla has been promoted as Second-In-Command in the year 2016, the petitioner has not been granted the said promotion.

9. Learned counsel appearing for the petitioner has drawn the attention of this court to the various affidavits filed on behalf of the respondents. It is submitted that the petitioner was made Assistant Commandant & Deputy Commandant on the same date with effect from 21<sup>st</sup> February, 2015 (FN), as against his immediate junior A.K. Shukla who was promoted as Assistant Commandant on 17<sup>th</sup> September, 2002 and Deputy Commandant with effect from 18<sup>th</sup> February, 2009.

10. Learned counsel for the petitioner further submits that while his juniors Mukhtar Singh and A.K. Shukla have been granted promotion, however, due promotions, have not been granted to the petitioner. He submits that despite Mukhtar Singh and A.K. Shukla being his juniors, different parameters have been adopted for petitioner in granting the said promotions.

11. Learned counsel for the petitioner by referring to the affidavits of the respondents submits that Mukhtar Singh, being his junior, has been shown below the petitioner in seniority in the affidavits of the respondents.

12. Learned counsel for the petitioner has drawn the attention of this court to the documents on record which show the various promotions granted to A.K. Shukla and Mukhtar Singh.

13. He further submits that the only ground for not granting the due promotion to the petitioner is that the petitioner does not have the requisite residency period. It is submitted that the said ground for denial of promotion



to the petitioner is totally wrong.

14. In support of his aforesaid submissions with respect to residency period, learned counsel for the petitioners relies upon the following judgments:

- i. Kerela Transport Development Versus Finance Corporation Limited, 2022 (2) SCALE 848.*
- ii. Indusind Bank Limited and Another Versus Simarjit Singh, 2022 (2) SCALE 857.*
- iii. NB. Subedar (SKT) Jasbir Singh Versus Union of India and Ors., 115 (2204) Delhi Law Times 351 (DB).*
- iv. Jasbir Singh Versus Union of India (UOI) and Ors., MANU/DE/1160/2004.*

15. He further submits that the petitioner has also not been granted the Non-Functional Financial Up-gradation (“NFFU”) benefit, which was due in 2016.

16. He further submits that the petitioner is now retiring on 31<sup>st</sup> January, 2024. Further, all the benefits which the petitioner received were only pursuant to various directions passed by this court in several orders dated 11<sup>th</sup> December, 2014, 04<sup>th</sup> May, 2016, 09<sup>th</sup> August, 2016, 04<sup>th</sup> February, 2018, 04<sup>th</sup> December, 2018 and 11<sup>th</sup> March, 2019 in the present proceedings.

17. Thus, it is submitted that it is a clear case of contempt by the respondents. Therefore, the petitioner prays for directions to the respondents for grant of promotion to the post of Second-In-Command as was granted to his immediate junior A.K. Shukla.

18. He further submits that though the petitioner was granted promotion as Assistant Commandant and Deputy Commandant in the year 2015,



however, the said exercise had to be undertaken by the respondents in the year 2011, pursuant to the judgment dated 01<sup>st</sup> September, 2011 in his favour.

19. It is the contention on behalf of the petitioner that Mukhtar Singh was granted promotion in a period of one day in contempt proceedings from the post of Assistant Commandant to the post of Deputy Commandant and from the post of Deputy Commandant to the Rank of Second-In-Command, without undergoing any promotional courses or any Residency Period. However, promotion has not been granted to the petitioner on account of not having undergone any promotion courses and not fulfilling the Residency Period.

20. Thus, he submits that there have been non-compliances by the respondents time and again.

21. Per contra, learned counsel appearing for the respondents submits that as per the directions of this court dated 01<sup>st</sup> September, 2011, there were three substantive directions to the respondents viz. reinstatements of the petitioner, 50% back wages to be granted to the petitioner and consequential benefits. He submits that the petitioner has already been reinstated and 50% back wages have already been granted to the petitioner. This fact is not disputed by learned counsel for the petitioner.

22. He further submits that the order dated 01<sup>st</sup> September, 2011 passed by this court has been substantively complied with.

23. He submits that the petitioner was granted the promotion as Inspector with effect from 01<sup>st</sup> October, 1992 vide order dated 11<sup>th</sup> July, 2013.

24. Further, the petitioner was granted promotion as Assistant Commandant with effect from 17<sup>th</sup> September, 2002. It is further submitted



that the petitioner was granted promotion to the post of Deputy Commandant with effect from 18<sup>th</sup> February, 2009. Thus, it is submitted that the petitioner has been granted due promotions as per the Rules.

25. It is further submitted that the promotions that have been granted to the other incumbents viz. Mukhtar Singh and A. K. Shukla have also been granted as per law.

26. It is submitted that Mukhtar Singh was senior to the petitioner. Further, A.K. Shukla has also been granted promotion as per the relevant Rules.

27. In rejoinder, learned counsel for the petitioner submits that Mukhtar Singh was never senior to the petitioner. He submits that in the year 2015 Mukhtar Singh was only an Assistant Commandant, while the petitioner was already a Deputy Commandant.

28. Therefore, learned counsel for the petitioner submits that while Mukhtar Singh was given promotion despite the fact that he had no Residency Experience and had not undertaken any promotion course, the due promotions have not been granted to the petitioner. It is submitted that the petitioner has been denied the promotion to the post of Second-In-Command on the ground that the petitioner did not have the requisite Residency Experience and the experience of mandatory field service.

29. This court has heard learned counsel for the parties and has perused the record.

30. Perusal of the judgment dated 01<sup>st</sup> September, 2011 in *W.P.(C) No. 2293/2011*, manifests that directions had been issued by this court holding the petitioner as eligible for reinstatement after his acquittal by the criminal court on 03<sup>rd</sup> September, 1993.



31. Thus, directions were given to the respondents to grant 50% of the back wages to the petitioner with effect from 03<sup>rd</sup> September, 1993 till reinstatement with all consequential benefits and continuity in service.

32. Pursuant to the aforesaid judgment, the petitioner has been granted various promotions by the respondents after his reinstatement. Reference in this regard may be made to the Compliance Affidavit dated 13<sup>th</sup> March, 2019 filed on behalf of the respondents. Relevant portions of the same read as follows:

“xxx xxx xxx

4. *It is most respectfully submitted that in order to implement the Court order, 02 review DPCs were convened on 07/01/2015 for considering promotion of Sarvjeet Singh to the rank of Asstt. Comdt. and Dy. Comdt. On being found FIT he was promoted to the rank of Asstt. Comdt and Dy. Comdt. vide signal dated 17/02/2015 w.e.f DPC dated 24/07/2002 for the vacancy 2002-03 and 12/12/2008 for the vacancy year 2008-09 respectively and assigned seniority above Sh. A.K. Shukla, DC (IRLA:5549).*

5. *The petitioner physically took over the charge of Asstt. Comdt. and Dy. Comdt. on 21/02/2015. As such the Court order upto this level was complied with as his immediate junior was also holding the rank of DC by that time.*

6. *Sh. A. K. Shukla, Dy. Comdt.(IRLA: 5549) who was immediate junior to Sh. Sarvjeet Singh, Dy. Comdt. was eligible for promotion to the rank of 2-I/C as per his seniority and promoted to the rank of 2-I/C w.r.t. DPC dated 05/10/2016 for the vacancy year 2016-17. But the petitioner was falling short in Group-A service and residency period by 8 years, 10 months 20 days and 3 years, 10 months and 20 days respectively, as such he was not fulfilling the eligibility conditions for promotion to the rank of 2-I/C. His case for relaxation in eligibility conditions was taken up with MHA alongwith other officers for making him eligible for promotion to the rank of Second-in-command. But the proposal was not favoured by MHA. As such he could not be considered for promotion to the rank of 2-I/C during the vacancy year 2016-17. Thereafter, keeping in view the contempt petition filed by officer, his case was again sent to MHA vide CRPF Pers Directorate UO note dated 25/10/2016 for relaxation in eligibility conditions, for convening*



review DPC to consider his promotion to the rank of 2-I/C w.r.t. DPC dated 05/10/2016 for the vacancy year 2016-17. Thereafter the case remained under active correspondence with MHA. MHA referred the case to DoPT and DoPT observed that "the relief granted by the Hon'ble Court has already been extended to the petitioner by promoting him to the rank of Dy. Commandant at par with his junior. The ambit of the court order ends after granting promotion to the rank with seniority. It appears that no further relaxation is warranted. MHA may justify."

7. That the case was again referred to MHA vide UO dated 20/09/2017 with justification. But MHA returned the proposal with some observations. The same were rectified and suitable reply sent to MHA vide this Directorate UO dated 30/10/2017. Further after discussions, MHA requested to send a fresh proposal vide their noting dated 05/01/2018. Accordingly, vide CRPF Pers Directorate UO note dated 14/03/2018, the proposal was again submitted to MHA with full justification with the request to convey necessary approval of the competent authority for convening review DPC to consider promotion of the officer to the rank of Second-in-Command w.r.t. DPC dated 05/10/2016. The same was returned vide MHA noting dated 07/06/2018 with the directions to re-submit the same.

8. That the case was again re-submitted vide UO dated 24/07/2018. But MHA vide noting dated 15/02/2019 has returned the proposal intimating that the relief granted by the Hon'ble Court has already been extended to the petitioner by promoting him to the rank of Dy. Commandant at par with his junior.

9. It is further submitted that to comply with the Hon'ble Court order dated 04/12/2018, the respondents had been re-examined the case of the petitioner in light of existing rules/instructions and vide order No. R.XIII-13/2018-CS-Adm-3 dated 18/02/2019 respondents issued an amendment order to earlier order dated 22/06/2016. In which 801 days period i.e. date of removal (25/06/1991) to date of acquittal (03/09/1993) has been counted as duty for counting his length of service except pay / leave / LTC etc. His intervening period from 03/09/1993 to the date of re-instatement i.e. 28/08/2010 has also been counted as duty for counting his service except leave/LTC etc. Further, in accordance to the Judgment dated 01/09/2011 of this Hon'ble Court the petitioner has also been made entitled for 50% back wages w.e.f. 03/09/1993 to 28/08/2010. Copy of amended order dated 18/02/2019 is annexed hereto as Annexure R/1.

xxx xxx xxx"



33. Reference may also be made to the sur-rejoinder dated 18<sup>th</sup> November, 2017 filed on behalf of the respondents, relevant portions of which, read as under:

“xxx xxx xx

3. It is submitted that in compliance to Court order dated 01.09.2011, the petitioner was reinstated into service w.e.f. 29.08.2010, granted 50 % of back wages w.e.f 03.09.1993 and also all consequential benefits i.e. promotion to the rank of Insp, A/C & Dy. Comdt. As per his seniority. Therefore, contention of court judgment is not acceptable.

4. It is submitted that as per court Order dated 01.09.2011, it directed to grant 50% of the back wages to the petitioner w.e.f 03.09.1993 till reinstatement with consequential benefits i.e. continuity in service etc. Accordingly, the period from 03.09.1993 to the date of reinstatement 28.08.2010 was counted as duty for counting his length of service vide IGP, CS O/O No. R.XIII-13/2008-CS-Adm.3 dated 11.04.2012. Later as per Court order dated 04.05.2016, amendment order was issued vide IG CS O/O No. R.XIII-13/2008-CS-Adm.3 dated 22.06.2016 treating the intervening period from date of removal (25.06.1991) to date of reinstatement (28.8.2010) as duty for counting his length of service. Earlier the petitioner was removed from service w.e.f. 25.06.1991 and was acquitted from the criminal charges w.e.f. 03.09.1993. The above period was required to be regularized for continuity in service. But the petitioner has no leave at his credit and hence the intervening period from 25.06.1991 to 02.09.1993 (Total 801 days) was regularized as EOT and the said period upto date of reinstatement was treated as duty for counting length of service vide order dated 22.06.2016. Thus the courts judgment dated 01.09.2011 & 04.05.2016 were already complied with. Further as per court order dated 01.06.2011 the petitioner was already granted 50 % of back wages w.e.f. 03.09.1993 and no more monetary benefits will be entitled to him. Further all consequential benefits i.e. promotion to the rank of Insp, A/C & Dy. Comdt. as per his seniority were granted to the petitioner.

5. The intervening period from date of removal (25.06.1991 to date of (28.8.2010) was counted as duty for counting his length of service as per amendment order issued vide IG CS O/O No. R.XIII-13/2008-CS-Adm-3 dated 22.6.2016. Hence the contention of the



*petitioner is not tenable.*

*xxx xxx xxx*

*7. The date of appointment in the rank of SI/GD in R/O Shri Mukhtar Singh was 06.01.1986 and as such the petitioner cannot claim seniority at par with him. Therefore, the contention of the petitioner that his seniority was not considered at par with his batch mates is baseless and not acceptable.*

*xxx xxx xxx*

*9. It is submitted that the seniority of the petitioner in the rank of Inspector and latter upto the rank of Dy. Comdt. was fixed correctly according to the rules. He was briefed about fixation of his seniority in the rank of Inspector/GD during his visits at this Directorate General as well as in the Court itself. Hence, the claim of the petitioner is not justified and violative of the settled rule position on the subject.*

*xxx xxx xxx”*

34. Further, by amended additional affidavit dated 04<sup>th</sup> December, 2019, the respondents stated as follows:

*“xxx xxx xxx*

*1. That in order to implement the Court order dated 01/09/2011 passed by the Hon'ble High court of Delhi, 02 review DPCs were convened on 07/01/2015 for considering promotion of Shri. Sarvjeet Singh {hereinafter called as Petitioner) to the rank of Asstt. Commandant and Dy. Commandant. On being found Fit, he was promoted to the rank of Asstt. Commandant and Dy. Commandant notionally as per details mentioned below vide Directorate General, CRPF, signal No. J.IL1/2013-Pers (A/C) dated 17/02/2015 annexed as Annexure-R/1.*

| <i>S/No.</i> | <i>Rank to which promoted</i> | <i>Date of notional promotion with name of immediate junior</i>                                | <i>Reference of DPC(Date &amp; Year) on which officer promoted</i> | <i>Seniority fixed</i>                                                      |
|--------------|-------------------------------|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|-----------------------------------------------------------------------------|
| <i>1.</i>    | <i>Asstt. Comdt.</i>          | <i>17/09/2002 (i.e. the date of promotion as Asst. Commandant of his next immediate junior</i> | <i>24/07/2002 (2002-03)</i>                                        | <i>Below-Shri Hardugan Aind, Asstt. Comdt (IRLA No. 7115) &amp; Above –</i> |



|    |            |                                                                                                                                                                  |                         |                                                                                                                                                                    |
|----|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |            | No. 820300114<br>Insp. A.K. Shukla<br>(then DC, IRLA<br>No. 5549)                                                                                                |                         | Shri. A.K.<br>Shukla,<br>Asstt.<br>Comdt. (then<br>DC) (IRLA-<br>5549)                                                                                             |
| 2. | Dy. Comdt. | 18/02/2009 (i.e.<br>date of<br>promotion as Dy.<br>Comdt. of his<br>immediate junior<br>Shri A.K. Shukla,<br>Asstt. Comdt<br>(then Dy.<br>Comdt)(IRLA-<br>5549). | 12/12/2008<br>(2008-09) | Below-Shri<br>Dhanbir<br>Singh, Dy.<br>Comdt. (now<br>Retired<br>From<br>service),<br>(IRLA-5544)<br>& Above-<br>Shri A.K.<br>Shukla, Dy.<br>Comdt.<br>(IRLA-5549) |

2) That vide representation dated 30.11.2012 (Annexure P/1 of Contempt Petition) addressed to DG, CRPF, Petitioner himself prayed for the promotion to the rank of Asst. Commandant and that his seniority in the rank of Asst. Commandant may be fixed at par with his immediate junior. It is submitted that Petitioner physically took over the charge of Asstt. Commandant and Dy. Commandant on 21/02/2015. As such, the Court order for promotion upto the stated level, payment of backwages amounting to Rs. 10,42,583/-, granting seniority & continuity of service was complied with, it is pertinent to state that Petitioner's immediate junior Shri A.K.Shukla was also holding the rank of Dy. Commandant by that time.

3) That as per Recruitment Rules (RR)-2010, Five years service should be in the rank of Dy. Commandant (DC) for the promotion from DC to 2-1/0 and 2 Years service as DC in Duty Battalion of CRPF. Further, a candidate should have undergone promotional course/training such as Junior Command Management Course (JCMC) prescribed by DG CRPF from time to time. It is submitted that where juniors who have completed their qualifying and eligibility service are being considered for the promotion, their senior would also be considered provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years, whichever is less and



*have successfully completed their probation period for promotion to the next higher grade alongwith their juniors who have already completed such qualifying or eligibility service. The Relevant pages of Recruitment Rules (RR)-2010 is annexed herewith as Annexure R/2.*

*4) That Shri. A.K.Shukla, Dy. Commandant(IRLA -5549), who was immediate junior to Petitioner was eligible for promotion to the rank of 2-I/C in terms of his seniority and promoted to the rank of 2-I/C from the panel of DPC dated 05.10.2016 for the vacancy year 2016-17.*

*5) That the petitioner was falling short of Group-A service and residency period by 8 years 10 month & 20 days and 03 years 10 months & 20 days respectively Owing to this reason, he was not fulfilling the eligibility conditions for promotion to the rank of 2-I/C.*

*6) Thereafter, proposal for relaxation in eligibility conditions in respect of the petitioner along with cases of other officers was taken up with MHA vide Directorate General, CRPF, UO Note No.P.VII-5/2016-Pers-DA-I dated 08/08/2016. But, the same was not agreed to by competent authority as intimated by MHA vide letter dated 23/09/2016. In result of which, the petitioner could not be considered for promotion to the rank of 2-I/C during the vacancy year 2016-17.*

*7) It is submitted that as his immediate junior was promoted to the rank of 2-I/C from the panel of DPC dated 05/10/2016, his case was again sent to MHA vide Directorate General, CRPF, UO Note dated 25/10/2016 for granting relaxation in eligibility conditions for convening review DPC to consider his promotion to the rank of 2-I/C w.r.t. DPC dated 05/10/2016 for the vacancy year 2016-17. Thereafter, the case remained under active correspondence with MHA. Finally, MHA referred the case to DoPT and DoPT vide their ID Note Dy. No. 1267786/17/CR dated 13/09/2017 observed that "the relief granted by the Hon'ble Court has already been extended to the petitioner by promoting him to the rank of Dy. Commandant at par with his junior. The ambit of the court order ends after granting promotion to the rank with seniority. It appears that no further relaxation is warranted. MHA may justify.*

*xxx xxx xxx*

*12) That the seniority of the petitioner has been correctly fixed in the rank of Asst. Commandant(AC) & Deputy Commandant (DC) as per details given below:-*



a) AC- Below Sh. Hardugan Singh (AC) & above Shri AK Shukla (AC) the then DC

b) DC- Below Sh. Dhanbir Singh (DC)(now retired from service) and above Shri A.K. Shukla (DC).

13) That as per direction of the Hon'ble Court for **continuity of service**, the respondent had re-examined the case and issued an amendment order to earlier order dated 22.06.2016. In which 801 days period i.e. date of removal (25.06.1991) to date of acquittal (03.09.1993) has been counted as duty for counting his length of service excepted pay/leave/LTC. His intervening period from 03.09.1993 to the date of re-instatement i.e. 28.08.2010 has also been counted as duty for counting of his service except leave/LTC etc. Further, in accordance to the judgment dated 01.09.2011 of this Hon'ble Court, the Petitioner has also been made entitled for 50% back wages w.e.f. 03.09.1993 to 28.08.2010.  
xxx xxx xxx”

35. Perusal of the aforesaid affidavits clearly show that respondents have substantively complied with the directions issued by this court passed in judgment dated 01<sup>st</sup> September, 2011, pursuant to which the petitioner has already been granted various promotions.

36. The essential dispute now raised by the petitioner is with respect to the fact that the petitioner has not been granted promotion as Second-In-Command, whereas his immediate junior Mr. A.K. Shukla had already been granted the said promotion.

37. In their affidavit, the respondents have categorically stated that the said A.K. Shukla has been granted promotion as per law and in accordance with the Rules.

38. Therefore, once the judgment passed by the Division Bench in W.P.(C) No. 2293/2011 has been substantively complied with, any further disputes raised by the petitioner with regard to his further promotion, cannot be adjudicated by this court in the present contempt proceedings. There are



various questions of factual disputes which have been raised before this court pertaining to the entitlement of the petitioner for grant of promotion as Second-In-Command.

39. Further, this court notes that it is the clear stand of the respondents that A.K. Shukla, the immediate junior of the petitioner, has been granted promotion as per Rules and in accordance with law.

40. This Court while adjudicating a matter in contempt proceedings, cannot adjudicate any disputes with respect to disputed questions of facts as regards the entitlement of the petitioner for further promotion to the rank of Second-In-Command. There were no specific directions by the learned Division Bench in its judgment dated 01<sup>st</sup> September, 2011 with respect to granting any specific promotion to the petitioner to the rank of Second-In-Command.

41. Therefore, the said dispute cannot be adjudicated in the present proceedings. If the petitioner has any grievance as regards non-grant of promotion to him to the rank of Second-In-Command and the promotion granted to his immediate junior Mr. A.K. Shukla, the petitioner would have to raise such disputed questions in independent proceedings, where his rights with respect to his entitlement to further promotion would have to be adjudicated. The said dispute cannot form the subject matter of the present contempt proceedings.

42. The other dispute raised by the petitioner in the present proceedings is with respect to non-grant of NFFU to the petitioner. This court notes that there are no such specific directions in the judgment dated 01<sup>st</sup> September, 2011 with respect to the same.

43. This court also takes note of the submission made by the respondents



that the issue of grant of NFFU to the petitioner, is directly related to the issue of grant of promotion to the petitioner to the rank of Second-In-Command. It is the case of the respondent that in the absence of grant of promotion to the petitioner to the rank of Second-In-Command, he is not entitled for grant of NFFU.

44. Though, the aforesaid fact is disputed by learned counsel for the petitioner, it is to be noted that the issue with respect to grant of NFFU to the petitioner is an issue, which cannot be adjudicated by this court in the present proceedings. There are disputed questions involved, and rights and entitlement of the petitioner need to be established in this regard. Therefore, the question with respect to payment of any benefit of NFFU to the petitioner, will essentially have to form subject matter of separate proceedings. The said issue again cannot be adjudicated by this Court in the present contempt proceedings.

45. This court can only consider the directions issued in the judgement or order that a party is alleged to be in contempt of and cannot consider the questions or any disputed facts in contempt proceedings. Thus, Supreme Court in the case of ***Jharieswar Prasad Paul and Ors. Versus Tarak Nath Ganguly and Ors., (2002) 5 SCC 352*** has held as follows:

*“11. ....It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the judgment or*



*order and not to consider the question as to what the judgment or order should have contained. At the cost of repetition, be it stated here that the court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party, which is alleged to have committed deliberate default in complying with the directions in the judgment or order.....”*

46. Law in this regard is very clear that the court while dealing with contempt matters is concerned with implementation of the substantive directions in the original order, for compliance of which contempt proceedings have been initiated. No further or incidental directions can be issued by the Court in exercise of its jurisdiction in contempt proceedings. Thus, Supreme Court in the case of ***V. Senthur and Another Versus M. Vijayakumar, IAS, Secretary, Tamil Nadu Public Service Commission and Another, 2021 SCC OnLine SC 846***, has held as follows:

“xxx xxx xxx

*15. There can be no quarrel with the proposition that in a contempt jurisdiction, the court will not travel beyond the original judgment and direction; neither would it be permissible for the court to issue any supplementary or incidental directions, which are not to be found in the original judgment and order. The court is only concerned with the wilful or deliberate non-compliance of the directions issued in the original judgment and order.*

xxx xxx xxx”

47. Therefore, no directions can be issued by this court with respect to grant of promotion to the petitioner to the rank of Second-In-Command or grant of benefits under NFFU, as there are no specific directions in this regard in the judgment dated 01<sup>st</sup> September, 2011 passed in *W.P.(C) No. 2293/2011*.

48. As noted above, adjudication with respect to entitlement of the



petitioner for his promotion to the rank of Second-In-Command, cannot be subject matter of the present proceedings. Further, this court cannot also adjudicate on the merits of the case put forward by the petitioner with respect to the issue as to whether the Residency Period will or will not be material for the purposes of grant of promotion to the petitioner to the rank of Second-In-Command.

49. In view thereof, no further directions can be passed in the present contempt proceedings.

50. However, considering the disputes raised by the petitioner, liberty is granted to the petitioner to initiate independent proceedings in accordance with law, to raise his claim for promotion to the rank of Second-In-Command and for grant of benefits of Non-Functional Financial Up-Gradation.

51. This court clarifies that it has not expressed any opinion on the merits of the claim of the petitioner with respect to grant of promotion to the rank of Second-In-Command and grant of benefits of the Non-Functional Financial Up-Gradation.

52. This court also notes that promotion to the post of Inspector was granted to the petitioner in the year 2013, though directions in this regard were issued by this court on 01<sup>st</sup> September, 2011. However, this court is of the view that once the substantive compliance has been made by the respondents, though belatedly, no case is made out for proceeding for contempt against the respondents.

53. It has been held in a catena of judgments that to punish a contemnor, the disobedience should be 'wilful'. If two interpretations are possible and if action is not wilfully contumacious, a contempt proceeding is not



maintainable. Furthermore, the element of willingness is an indispensable requirement to charge under the Contempt Act. Thus, the Supreme Court in the case of ***Ram Kishan Versus Tarun Bajaj & Ors., (2014) 16 SCC 204*** has held as follows:

“xxx xxx xxx

*12. Thus, in order to punish a contemnor, it has to be established that disobedience of the order is “wilful”. The word “wilful” introduces a mental element and hence, requires looking into the mind of a person/contemnor by gauging his actions, which is an indication of one's state of mind. “Wilful” means knowingly intentional, conscious, calculated and deliberate with full knowledge of consequences flowing therefrom. It excludes casual, accidental, bona fide or unintentional acts or genuine inability. Wilful acts does not encompass involuntarily or negligent actions. The act has to be done with a “bad purpose or without justifiable excuse or stubbornly, obstinately or perversely”. Wilful act is to be distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It does not include any act done negligently or involuntarily. The deliberate conduct of a person means that he knows what he is doing and intends to do the same. Therefore, there has to be a calculated action with evil motive on his part. Even if there is a disobedience of an order, but such disobedience is the result of some compelling circumstances under which it was not possible for the contemnor to comply with the order, the contemnor cannot be punished. “Committal or sequestration will not be ordered unless contempt involves a degree of default or misconduct.”*

xxx xxx xxx

*15. It is well-settled principle of law that if two interpretations are possible, and if the action is not contumacious, a contempt proceeding would not be maintainable. The effect and purport of the order is to be taken into consideration and the same must be read in its entirety. Therefore, the element of willingness is an indispensable requirement to bring home the charge within the meaning of the Act.*

xxx xxx xxx”

54. In view of the detailed discussion hereinabove, the present contempt petition is disposed of, with liberty to the petitioner, as aforesaid. The



notices of contempt are, accordingly, discharged.

**(MINI PUSHKARNA)  
JUDGE**

**JANUARY 15, 2024/kr**