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

+ **CONT.CAS(C) 550/2021**

LT CDR SANDEEP BHATNAGAR

..... Petitioner

Through: Mr. S.C. Malhotra with Mr.
Kunal, Advocates.

versus

**DIRECTOR GENERAL BORDER SECURITY FORCE &
ANR.**

..... Respondents

Through: Ms. Arunima Dwivedi, CGSC
with Ms. Pinky Pawar, Advocate
for respondent/UOI. (M):
9810916537

Email:arunima.associates@gmail.
com

Mr. Ravindra Pratap Singh,
AC,BSF

%

Date of Decision: 20th February, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present petition has been filed alleging non-compliance of the order dated 29th January, 2021 passed by the Division Bench in *W.P. (C) No. 10397/2020*.

2. The said writ petition had been filed by the petitioner before this Court seeking directions to the respondents to constitute Departmental Promotion Committee ("DPC") to consider his promotion to the rank of



Second-In-Command (logistics) in BSF Air wing for vacancy year 2018.

3. By way of the aforesaid order, the Division Bench had directed that the respondent shall communicate the decision of the DPC as well as that of the Ministry of Home Affairs (“MHA”) to the petitioner with respect to considering the case of the petitioner for granting relaxation to the petitioner for DPC, 2020, for the rank of Equipment Officer (“EO”)/Senior Store Provisioning Officer (“SSPO”) (Second-in-Command) (“SIC”) (“EO/SSPO/2IC”).

4. The order dated 29th January, 2021 passed by the Division Bench of this Court reads as under:-

“Learned counsel for the respondents states that the Ministry of Home Affairs (MHA) has granted relaxation to the petitioner for DPC, 2020 to the rank of EO/SSPO (2IC) by granting exemption in RRs/equating his commissioned service (rendered by him in Navy) at par with Group ‘A’ Service.

Learned counsel for the respondents further assures and undertakes to this Court that the decision of DPC as well as that of the MHA shall be communicated to the petitioner within six weeks.

The statement/undertaking given by learned counsel for the respondents is accepted by this Court and the respondents are held bound by the same.

In view of the aforesaid undertaking, learned counsel for the petitioner does not wish to press the present writ petition any further. Accordingly, the present writ petition along with pending application stand disposed of.”

5. Perusal of the record before this Court shows that the aforesaid order dated 29th January, 2021, has been complied with by the respondents.

6. Subsequent to the passing of the aforesaid order, DPC was held by the respondents on 05th March, 2021 to consider the petitioner’s case for promotion to the rank of EO/SSPO (2IC). The said DPC proceedings



were submitted to the MHA on 05th March, 2021.

7. Subsequently, since there were some remarks by the MHA regarding the DPC for petitioner's promotion, the same were returned to respondent no. 1 for fresh consideration.

8. Subsequently, a fresh DPC was held by the respondent for consideration of the case of the petitioner's promotion. As soon as the above mentioned procedure was concluded, the respondents duly communicated the said decision to the petitioner vide letter dated 17th November, 2021.

9. The compliance affidavit filed on behalf of the respondents in this regard reads as under:-

“xxx xxx xxx

6. *That, it is most respectfully submitted that the aforesaid Order dated 29.01.2021 has been complied with, albeit with some delay, which was not intentional, but due to the procedure involved in the matter, It is most respectfully submitted that a Departmental Promotion Committee was held on 05.03.2021 to consider the Petitioner's case for promotion to the rank of Equipment Officer/Senior Store Provisioning Officer/(Second-in-command) for transitional year 2018 and the said DPC proceedings were submitted to MHA on 05.03.2021 (for approval of Competent Authority) by FHQ BSF.*

7. *That, however, the Ministry of Home Affairs (Pers-III Section) returned the DPC proceedings on 29.07.2021 with the remarks that the Officer (the Petitioner here-in) had been granted relaxation on 15.01.2021 for equating Commissioned Service rendered by him in the Indian Navy, with Group 'A' service hence, Lt Cdr Sandeep Bhatnagar, Logistics Officer (DC) was eligible for the next promotion to the rank of EO/SSPO(2IC) on or after 15.01.2021 and accordingly, he may be considered for next vacancy year.*

8. *That a reference was further made with the MHA on 03.08.2021 regarding the DPC for the Petitioner's promotion to the rank of EO/SSPO(2IC). Further, the MHA on 10.09.2021 re-iterated that the Officer (the Petitioner here-in) had been granted relaxation by the Competent Authority on 15.01.2021, as such, he would be eligible for*



next promotion on or after 15.01.2021 and his case for promotion may be considered for vacancy year-2022.

9. *That, accordingly, a fresh DPC for the vacancy year-2022 for consideration of case of the Petitioner's promotion to the rank of EO/SSPO(2IC) was held on 29.10.2021 and the same was submitted to the MHA on 02.11.2021 for obtaining approval of Competent Authority.*

10. *That as soon as the above mentioned procedure concluded, the Respondents communicated the said decision to the Petitioner vide letter dated 17.11.2021. A copy of the letter dated 17.11.2021 is herewith attached and marked as **Annexure-R1**.*

Copy to:-

1. MHA (Pers-III)

:-For information, please

2. Air Wing, FHQ

:-Please provide copy of this Speaking order to Lt. Cdr Sandeep Bhatnagar (Retd.), EO/SSPO(2IC) on proper receipt and apprise the Hon'ble Delhi High Court by filing a compliance affidavit, in terms of orders of Hon'ble Court orders dated 21.09.2022 and 10.01.2023.

3. Shri 5 C Malhotra,
L'd Advocate of the
Petitioner.

:-For information, please

4 Confdl Section, FHQ

5. D&L Branch

6. File”

10. Subsequently, during the pendency of the present petition, when the matter was listed on 21st September, 2022, learned counsel for the petitioner submitted that the petitioner shall make a representation to the respondents seeking the relaxation of the eligibility of service for maximum period of upto 3 months in terms of the O.M. dated 12th August, 2021 issued by the Ministry of Personnel, P.G. and Pensions Department of Personnel and Training. The order dated 21st September, 2022 reads as under:-

“The hearing has been conducted through hybrid mode (physical and



virtual hearing).

1. After some arguments, the learned counsel for the petitioner submits that he will make a representation to the respondents seeking the relaxation of the eligibility service for maximum period of upto 3 months in terms of the Memorandum F. No.AB-14017/17/2018- Estt.RR dated 12.08.2021 issued by the Ministry of Personnel, P.G. & Pensions Department of Personnel & Training. The relevant para of the said Memorandum reads as under:-

“4. With a view to enable timely holding of DPCs, where the recruitment has been shifted from financial year-wise to calendar year-wise, in the light of DoPT’s OM dated 8.5.2017, it has been decided in consultation with the Union Public Service Commission and approval of the competent authority to delegate powers to the Administrative Ministries and Departments (Cadre Controlling Authorities) to relax the eligibility service prescribed in the Recruitment Rules/Service Rules (RRs/SRs) for these posts/cadre, as on the crucial date viz. 1st January, 2021 for upto a maximum period of 3 months. Relaxation in eligibility service is to be accorded in such cases where the employees would have been eligible for being considered for promotion as on 1st April, 2021, but due to change in the crucial date to 1st January, 2021, they become ineligible for being considered for promotion during 2021. Similar relaxation is permitted for vacancy years 2022 and 2023, as indicated in the table below:

Vacancy Year	Crucial date of eligibility	Maximum relaxation of eligibility service delegated to the Administrative Ministry/Department
2021	1.1.2021	Upto 3 months for those who have completed eligibility service prescribed in the RRs by 31 st March, 2021
2022	1.1.2022	Upto 3 months for those who would complete eligibility service prescribed in



		<i>the RRs between 1st January and 31st March, 2022.</i>
2023	1.1.2023	<i>Upto 3 months for those who would complete eligibility service prescribed in the RRs between 1st January and 31st March, 2023.</i>

2. *The representation as and when made shall be decided by the respondents as per law and a speaking order may be passed within a period of six weeks from making of the representation with an intimation to the petitioner as well as to his counsel.*

3. *List on 24.11.2022."*

11. As per the aforesaid order dated 21st September, 2022, this Court directed the respondent to decide the representation of the petitioner with a speaking order within a period of six weeks. Pursuant to the aforesaid, the petitioner made a representation on 29th September, 2022 to the Director General, BSF with request to grant seniority to the rank of EO/SSPO (2IC) w.e.f. from 1st January, 2021.

12. Pursuant to receipt of the aforesaid representation, a speaking order dated 10th February, 2023 has been passed by the Director General, Border Security Force, Government of India, Ministry of Home Affairs, thereby disposing of the representation dated 29th September, 2022 submitted by the petitioner.

13. The speaking order dated 10th February, 2023 issued by the respondent reads as under:-

*"No. 17/130/2021/Pers/BSF/4766-71
Directorate General Border Security Force
Govt of India*



*Ministry of Home Affairs
(Personnel Dte-Pers Section)*

*Block No. 10, CGO
Complex,*

*Lodhi Road, New Delhi-110003.
Dated, the 10 Feb, 2023.*

To,

*Lt. Cdr Sandeep Bhatnagar (Retd.),
IRLA No. 81321001
EO/SSPO(2IC)
Air Wing, FHQ*

**Sub: DISPOSAL OF REPRESENTATION DATED 29.09.2022, IN
RESPECTFUL COMPLIANCE OF HON'BLE DELHI
HIGH COURT ORDER DATED 21.09.2022 PASSED IN
CONTEMPT PETITION (C) NO. 550/2021 FILED BY LT.
CDR SANDEEP BHATNAGAR (RETD.)**

*Please refer to your representation dated 29.09.2022 regarding
grant of seniority in the rank of EO/SSPO(2IC) w.e.f. 01.01.2021 by
granting waiver in accordance with DOP&T OM and interim reply
given to you vide this Dte letter No. 17/130/2021/Pers/BSF/40272-75
dated 17th Nov 2022.*

2. *In above context, it is to mention here that as per BSF Air Wing
Officers (Group- 'A' Combatised) Recruitment Rules 2011 (herein after
RR's 2011), the eligibility conditions for promotion from Logistics
Officer / Deputy Commandant to Equipment Officer/Senior Stores
Provisioning Officer (Second-in-command) are as under: -*

*(a) Officer holding the post of Logistic Officer (Deputy
Commandant) having five years' regular service in the pay
grade of Pay Band-3 (Rs.15600-39100) and Grade Pay Rs.
6,600/- with eleven years 'Group-A' service and possessing
qualifications and experience as under: -*

*(i) One year course in Stores Management or Material
Management from a recognized Institute.*

*(ii) Eleven years' experience in Stores Provisioning and
knowledge of procedure relating to purchase and
imports of aviation goods and modern method of
inventory control and in Stores Accounting and
Administration.*



3. You had completed 05 years' service as Logistic Officer /Deputy Commandant in BSF Air Wing as on 01.04.2018 but not completed 11 years Group-A service as per RRs-2011. Therefore, the matter was referred to the MHA on 16-01-2018 followed by subsequent clarifications / queries in the matter as sought by MHA & DOP&T from time to time with request to clarify whether the commissioned service rendered by you in Indian Navy will be counted towards Group-A service for the purpose of promotion to the rank of EO/SSPO (2IC) or otherwise. The Competent Authority at MHA accorded relaxation for equating your commissioned service of Indian Navy with Group-A service for the purpose of promotion vide UO No. 3414411/17/MHA/P-II/AW/08/59 dated 19.01.2021. As the MHA accorded relaxation on 19.01.2021 in eligibility service for equating your commissioned service of Indian Navy with Group-A service for the purpose of promotion, as such, your case could not be considered for promotion to the rank of EO/SSPO (2IC) during the vacancy year 2021 i.e. on 01.01.2021, the crucial date of eligibility.

4. On the direction of MHA, the DPC to fill up the vacant post of EO/SSPO(2IC) was conducted on 29.10.2021 and the DPC found you eligible for promotion only as on 01.01.2022 for the vacancy year 2022 and accordingly you were promoted to the rank of EO/SSPO (2IC) w.e.f. 01.01.2022 vide Pers Section order No. 17/130/2021Pers/BSF/48110-85 dated 30.12.2021.

5. Your representation dated 29.09.2022 for grant of seniority in the rank of EO/SSPO(2IC) w.e.f. 01.01.2021 by granting necessary relaxation in eligibility service in terms of DOP&T O.M. No. AB-14017/17/2018-Estt.RR dated 12.08.2021, was examined in detail at the MHA, and it has been observed that the said OM provides relaxation in residency service of employees who were affected by change in the crucial date for determining eligibility service from financial year to calendar year i.e. from 1st April to 1st January for the vacancy year 2019 onwards and upto the vacancy year 2023. In the instant case, you are not fulfilling eligibility service during this period, whereas, MHA had granted relaxation in RRs to count your previous service rendered in Navy as Group-A service and accordingly, got promotion to the rank of EO/SSPO (2IC) w.e.f. 01.01.2022 for the vacancy year 2022. As such, your case does not fall under the purview of the DOP&T OM dated 12.08.2021 for grant of further relaxations.

6. In view of the above, your representation dated 29.09.2022 regarding grant of seniority / promotion in the rank of EO/SSPO(2IC) with effect from 01.01.2021 by granting waiver in accordance with DOP&T OM dated 12.08.2021, cannot be acceded to and thus, rejected by the Competent Authority, at MHA, being devoid of merit.



(Susanta Kumar Nath) IPS
Inspector General (Pers)
For & On behalf of DG
BSF
10 Feb, 2023”

14. Perusal of the aforesaid, demonstrates clearly that the case of the petitioner has been considered by the respondents on various occasions when the DPC was constituted, as well as when the representation was submitted by the petitioner in terms of the liberty granted by this Court.

15. This Court also notes that the respondents have substantially complied with the directions passed by this Court, in as much as the petitioner has been communicated the decision of the DPC, as well as speaking order has been passed by the respondents to the representation filed by the petitioner.

16. This Court also notes that the petitioner has already received promotion to the rank of EO/SSPO (2IC) w.e.f. 01st January, 2022. The relevant portion of the affidavit of the respondents in this regard reads as under:-

“xxx xxx xxx

17. Further, representation dated 29.09.2022 of the petitioner for grant of seniority in the rank of EO/SSPO (2IC) w.e.f. 01.01.2021 by granting relaxation in eligibility service in terms of DoP&T O.M No. AB-1417/17/2018-Estt.RR dated 12.08.2021, was examined in detail at the MHA, and it has been observed that the said OM provides relaxation in residency service of employees who were affected by change in the crucial date for determining eligibility service from financial year to calendar year i.e. from 1st April to 1st January for the vacancy year 2019 onwards and upto the vacancy year 2023. In the instant case, the petitioner is not fulfilling eligibility service during this period, whereas, MHA has granted relaxation in RRs to count his previous service rendered in Navy as Group A service and accordingly, got promotion to the rank of rank of EO/SSPO (2IC) w.e.f. 01.01.2022



for the vacancy year 2022. As such, his case does not fall under the purview of the DoP&T OM dated 12.08.2021 for grant of further relaxations. Accordingly, his representation dated 29.09.2022 regarding grant of seniority/promotion in the rank of EO/SSPO (2IC) with effect from 01.01.2021 in accordance with DoP&T OM dated 12.08.2021, has been rejected by the Competent Authority, at MHA being devoid of merit and the decision of the Competent Authority has been conveyed to the Petitioner vide FHQ BSF (Pers Dte-Pers Section) Order No. 17/130/2021/Pers/BSF/4766-71 dated 10 Feb 2023.

*A copy of the order dated 10.02.2023 passed by FHQ BSF (Pers Dte-Pers Section), is marked and annexed herewith as **Annexure R-2**.
xxx xxx xxx”*

17. Per contra, at this stage, learned counsel for the petitioner submits that the petitioner is entitled to be granted promotion to the post of EO/SSPO (2IC), w.e.f. 01st January, 2021, however, the same is disputed by learned counsel for the respondent.

18. Perusal of the order dated 29th January, 2021 for which compliance is sought, does not manifest any specific direction to grant any specific seniority to the petitioner. In the absence of specific directions, the Court in the present proceedings cannot go into the merits of the case for grant of seniority to the petitioner from a particular date.

19. The Supreme Court in the case of *Snehasis Giri and Others Versus Subhasis Mitra*¹, has categorically observed that in contempt proceedings, it is not open to the Court to review decisions qua seniority and moreover, in contempt jurisdiction, the Court cannot enter into the merits of the matter. The relevant observations in the said judgment, read as under:-

“xxx xxx xxx

11. Furthermore, this court, in lawful exercise of contempt jurisdiction,

¹ 2023 SCC OnLine SC 107



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.”



12. In a later decision, *Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda* this court explained the limitations of a court exercising contempt jurisdiction:

“11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of “jurisdiction to punish for contempt” and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).”

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)

20. Accordingly, this Court is of the considered view that no contempt has been committed by the respondents. In case, the petitioner is dissatisfied with the seniority assigned to him, the same would constitute an independent cause of action and cannot be decided in the present proceedings.

21. Furthermore, it has been held in a catena of judgments that if compliance has been made, even though belatedly, that would not tantamount to contempt. This Court in the case of ***Delhi Rozi Roti Adhikar Abhiyan Versus Rajesh Ahuja***², has held as follows:-

“xxx xxx xxx

16. No doubt, this Court has expressed its dissatisfaction regarding the speed in compliance of aforesaid order of this Court by the respondent, however lack of speed alone is not sufficient for this Court to take action against the respondent on the ground of deliberate and wilful disobedience of the orders of this Court. Though this Court does not appreciate the delay on the part of the respondents in carrying out of the directions of this Court, however, it is not sufficient to hold up the respondents for committing contempt of court within the ambit of Section 2(b) of the Contempt of Courts Act, 1971.

17. As repeatedly held by the Supreme Court, disobedience of only such a level which brings up the deliberate, wilful and intended action on the part of a person to disobey the order of the court, it would classify as contempt of court.

xxx xxx xxx ”

(Emphasis Supplied)

22. In view of the aforesaid detailed discussion, the present contempt petition is found to be without any merits. The same is accordingly,

² 2022 SCC OnLine Del 3561



2024:DHC:1508



dismissed.

23. However, in case, the petitioner is aggrieved by any decision of the respondents in the DPC as well as the speaking order dated 10th February, 2023, the petitioner is at liberty to seek his remedies, in accordance with law.

MINI PUSHKARNA, J

FEBRUARY 20, 2024/ c

Signature Not Verified

Digitally Signed By: CHARU
CHAUDHARY
Signing Date: 26.02.2024
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