



2024:DHC:8784-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 10691/2024 & CAV 352/2024 & CM
APPL.43944/2024

UNION OF INDIA & ORS.Petitioners

Through: Mr. R.V. Sinha, SCGC with
Mr. A.S. Singh, Mr. Amit Sinha and Ms.
Shriya Sharma, Adv.

versus

SHASHANK SHARMA & ORS.Respondents

Through: Ms. Amita Singh Kalkal, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

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12.11.2024

C. HARI SHANKAR, J

1. This writ petition is directed against order dated 3 February 2024 passed in CP 388/2023, filed by the respondents seeking initiating of contempt proceedings against the petitioners for having contumaciously violated an earlier order dated 28 March 2023 passed by the Tribunal. The order reads thus:

“ORDER

Hon'ble Ms. Harvinder Kaur Oberoi. Member (J)

The OA filed by the applicants was allowed by this Tribunal vide its Order dated 28.03.2023 and the following directions were issued:



“7. We observed that time and again, the Hon'ble Supreme Court has observed that it is a legitimate expectation of the employees that they should get promotion to the next higher post and they have right to be considered for the next post as a fundamental right. The respondents stand is that for want of recruitment rules, they are not engaging any person and since the applicants became eligible for departmental test prior to the cutoff date, they were promoted subsequently in the month of August, 2017. Thus, they are not considering the case of the applicants.

8. In the sur-joinder filed by the respondents, it is stated that Since new Recruitment Rules for the post of Intelligence Officer are yet to be notified, it is solely with the of purpose discharging the statutory function, administrative exigency and to cater the operational needs that the DRI continues to post the officers in the grade of Intelligence Officer on deputation/ loan basis by issuing a vacancy circular for a particular period of time. It is also highlighted that all the officers, who have been posted as Intelligence Officer on deputation basis, are selected from amongst the officers of same rank/ grade (Inspector) working in the formations of Customs, GST, & Central Excise and officers holding analogous posts in Directorate General/ Directorates under CBIC in same pay-scale. It is also submitted that the appointment of officers on deputation basis is only for specific period of time and officers will be sent back to their parent Commissionerate on the completion of tenure.

9. We find it as discriminatory when the earlier recruitment rules are being operated by the respondents for persons employed on deputation basis then the applicants ought to have been promoted to the said post which has not been done, which is not permissible under law. The respondents have implemented the half side of the recruitment rules though the applicants seek promotion to the post of 10 relying upon the same very Recruitment Rules, *which has not been considered.*

10. In view of the above facts and circumstances, we find that this OA deserves to be allowed. Thus, *we hereby direct the respondents to take a call on the case of the applicants and consider them for appointment as per Recruitment Rules stated herein above, within a period of 60 weeks from the date of receipt of a certified copy of this Order*, it is needless to say that the applicants are entitled



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for monetary benefits from the date when they will join to the next post.”

2. The respondents have filed their compliance affidavit and alongwith the same, the order dated 28.08.2023 has been filed whereby the claim of the applicants has been rejected.

3. Learned counsel for the applicants submits that this Order is in stark disobedience of the directions issued by this Tribunal as the respondents were required to consider the case of the applicants for promotion as per the RRs of 11.08.1990. However, the respondents had rejected the claim based on the extraneous consideration that none of the applicants were in the grade of Senior Tax Assistant as on 01.04.2017, nor did they have the requisite five year service as Tax Assistant on the said crucial date.

4. Learned counsel for the respondents submit that *vide* the circular dated 21.02.2018, the applicants were considered eligible to appear in the departmental examination for promotion to the post of Intelligence Officer for the vacancy year 2017-18, this was due to the fact that applicants had been promoted to STA before the circular was issued. However, they were not serving as STA on 01.04.2017 (crucial date), but were promoted after 01.04.2017 and before the circular 21.02.2018.

5. In the counter affidavit filed before this Tribunal in OA similar stand was taken by respondents for ultimately considering applicants ineligible . for promotion, i.e. that on the crucial date for the vacancy year of 2017-18 i.e. on 01.04.2017, the applicants were not serving as Senior Tax Assistant although, they were promoted as STA in August 2017.

6. We have perused the circular dated 21.02.2018 which clearly specifies that for the departmental examination for post of Intelligence Officer in DRI the list of officers were found eligible which list includes the applicants:

1. Mr. Shashank Sharma, Senior Tax Assistant
2. Mr. Mohit Chauhan, Senior Tax Assistant
3. Mr. Anurag Gupta, Senior Tax Assistant
4. Mr. SunitDutt Gaur, Senior Tax Assistant
5. Mr. Naveen Jha, Senior Tax Assistant
6. Ms. Shivani Kumar, Senior Tax Assistant
7. Mr Surendra Kumar, Senior Tax Assistant
8. Mr Akhil Baliyan. Senior Tax Assistant

7. Meaning thereby, that on the date the circular was issued i.e. on 21.02.2018 and on the date when the examination was



conducted, the applicants were fully eligible as they were holding the designation of Senior Tax Assistant. If there was a condition/requirement, to be eligible on the crucial date of the vacancy year, the same was relaxed in the case of applicants.

8. Respondents have issued the speaking order and rejected their claim for promotion merely for the reason that on the crucial date of the said vacancy year, they were not serving as Senior Tax Assistant.

9. The direction issued by this Tribunal was clear that the respondents were required to consider their case as per the RRs. According to RR's STA's are eligible for appearing in the departmental examination for promotion to the post of Intelligence Officer in DRI and applicants were serving as STA on the date of the examination.

10. Counsel appearing for the applicant submits that the RRs firstly do not specify that a candidate has to be Senior Tax Assistant on the crucial date of the vacancy year, rather it says that STA's are eligible for promotion. Further, she submits that even other-wise, if such a condition was there, the same was waived by the respondents themselves as they had considered the applicants as eligible for appearing in the said departmental examination and declared them qualified in the said examination. Therefore, the order issued by the respondents in compliance is a sham and has been passed only to avoid granting the benefits due to applicants. The order passed is willful contempt.

11. Counsel relied upon the judgement of the High Court of Hyderabad in the case of **S. Kiranmayi v N. Sambasiva Rao & Ors.** CP No. 2013/2016, decision dated 27.04.2017, to buttress her submission that when the order passed by the contemnor is based on untenable grounds the same has to be read as willful and deliberate violation.

12. *Per contra* counsel for the respondents vehemently argued that respondents have considered the case of the applicants as per direction of the tribunal and have issued the speaking order. There is no willful contempt of the directions. Counsel has relied upon the judgement of the Apex Court in the case of **J S. Parihar v. Ganpati Duggal¹**. Wherein the Hon'ble Court has held as under:

“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

¹ AIR 1997 SC 113



in an appropriate forum."

In *S. Kiranmayi v N. Sambasiva Rao & Ors*, Hon'ble High Court has taken note of the apex court judgement in *J. S. Parihar (Supra)* and held as under:-

"In *J. S. Parihar* the Supreme Court was considering a case relating to the preparation of seniority list. The Division Bench of the High Court declared the seniority list prepared with retrospective effect in terms of the amended Rules as unconstitutional and it accordingly quashed the list and directed preparation of the seniority list afresh. The said order was followed by two other Division Benches. When contempt proceedings were taken up, the learned single Judge of the Court held that the respondents had not willfully disobeyed the orders of the Court and gave direction to prepare the seniority list as per the orders of the Division Bench by giving liberty to the petitioner to move the contempt petition afresh if the order was not complied with. When the appeal was filed against the said order, a preliminary objection was taken with regard to the maintainability of the appeal. The Division Bench held that the appeal was not maintainable under Section 19 of the Contempt of Courts Act, but held that the appeal would be maintainable as a Letter Patent Appeal and set aside the directions issued by the learned single Judge. The matter was taken up to the Supreme Court. The Supreme Court, on the facts of the case, held that the appeal was not maintainable as there was no order of punishment. With regard to setting aside the direction of the learned single Judge, it was held that when once an order was passed by the Government on the basis of the directions issued by the Court, a fresh cause of action arises, but that cannot be considered to be a willful violation of the order. It was further held that when the learned single Judge held that there was no willful violation of the orders, he ought not to have issued further direction to redraw the seniority list."

In *S. Kiranmayi (supra)*, Hon'ble High Court has held further:

"In the light of the above decisions it has to be considered whether the direction of this Court mandates the respondents to consider the case of the petitioner in a positive manner or it left anything to the discretion of the respondents enabling them, to pass an order giving rise to a fresh cause of action. Therefore, the dictionary meaning of the word 'consider' means to consider basing on the material available on record. To consider means to consider



sincerely and honestly, which means to make sincere effort to pass an order in the letter and spirit of the directions of this Court. To consider means to make all efforts to fulfil the object of the order of the Court, to consider does not mean to search for a lame excuse and reject the claim. It does not mean to just pass an order and dismiss the claim of the petitioner on flimsy grounds. Therefore, the respondents shall not invent or search some fresh reason or other technical ground and reject the claim of the petitioner when there is a specific direction by this Court to consider the case of the petitioner. The Authorities cannot show the same reason or ground which they had already taken in the earlier proceedings. This amounts to showing disrespect to the orders of the court. The authorities cannot flout the orders of the Court on technical grounds.

This Court in *Sabza Ali v M. Raghunandan*² considered the decisions of the Supreme Court in *Maniyeri Madhavan v. Inspector of Police, Cannanore*³, *In re Vinay Chandra Mishra*⁴, *Anil Ratar Sarkar v Hiral Ghosh*⁵ and *E.T Sunup v C.A.N.S.S. Employees Association*⁶, and quoted lackadaisical attitude, which itself deliberate or wilful, have not been sufficient ground of defence in proceeding. Obviously, the purpose compliance of the orders of the court and within stipulated period.

Here is a case of a poor lady who wanted compassionate appointment and was denied the same on untenable grounds. If the second respondent has taken into consideration the facts and circumstances of the case and the order passed by this Court, he would have allowed the case of the petitioner. The act of the second respondent to circumvent the orders should not be encouraged and the decisions relied on by the learned Counsel for the contemnor are not applicable to the facts of the case. Hence, this Court holds that the second respondent is liable for punishment and, accordingly, the second respondent is convicted under the Contempt of Courts Act and punished, to pay a fine of 5,000/- (Rupees five thousand only) to the petitioner within four weeks. The payment of fine or the punishment in this case, will not absolve the responsibility of the respondents to comply with the order. The Contempt Case is, accordingly, allowed."

² 2016 (5) ALT 226 : 2016 (4) ALD 520

³ AIR 1993 SC 356

⁴ (1995) 2 SCC 584

⁵ (2002) 4 SCC 21

⁶ (2004) 8 SCC 683



13. In the instant case we are conscious of the fact that correctness of an order passed in compliance with directions issued by courts cannot be made the subject matter of a contempt proceeding for the reason even if the order was erroneous, it would not be a contumacious act. Regretfully like in *S. Kiramnayi* the respondents are deliberately taking advantage of the law, even though the facts of this case do not permit so.

14. Once the respondents allowed the applicants to participate in the departmental examination and even declared them passed in the said examination, *they could not have denied promotion*. This in a situation when respondents are filling up the posts by appointing others on deputation basis and utilizing direct recruit quota of 85% and ignoring the promotion quota of 15%, to the disadvantage of the applicants.

15. In view of the above discussion and following the law as laid down in *S. Kiramnayi (supra)*, we find that the order passed by the contemnor has to be read as based on untenable grounds, however we grant one opportunity to respondent contemnor to comply with the order passed by Tribunal in the light of the above discussion.”

2. CP 388/2023 alleged contempt, by the petitioner, of order dated 28 March 2023 passed by the Tribunal in OA 1788/2019. Paras 9 to 11 of the said order reads thus:

“9. We find it as discriminatory when the earlier recruitment rules are being operated by the respondents for persons employed on deputation basis then the applicants ought to have been promoted to the said post which has not been done, which is not permissible under law. The respondents have implemented the half side of the recruitment rules though the applicants seek promotion to the post of IO relying upon the same very Recruitment Rules, which has not been considered.

10. In view of the above facts and circumstances, we find that this OA deserves to be allowed. Thus, we hereby direct the respondents to take a call on the case of the applicants and consider them for appointment as per Recruitment Rules stated herein above, within a period of 6 weeks from the date of receipt of a certified copy of this Order. It is needless to say that the applicants are entitled for monetary benefits from the date when they will join to the next post.



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11. With this observation, the OA is disposed of. No costs.”

3. Pursuant to the aforesaid order, the petitioner issued an order dated 28 August 2023, which may also be reproduced, in *extenso*, as under:

“DRI.F.No. A-59011/39/2019-Estt.

Dated: 28.08.2023

ORDER No. 03/2023

This order is issued in compliance of the directions given by Hon'ble CAT, Delhi in order dated 28.03.2023 in OA No. 1788/2019- filed by ***Shri Shashank Sharma & Ors v UOI & Ors.*** Vide the said order, Hon'ble Tribunal has directed as follows:

“... we hereby direct the respondents to take a call on the case of the applicants and consider them for appointment as per Recruitment Rules stated herein above within a period of 6 weeks from the date of receipt of a certified copy of this order”.

A. Brief of the Case:

i. Below applicants joined the department as Tax Assistant (TA) in the erstwhile DRI/DGCEI cadre on the dates as shown against each name:

Sr. No.	Name of the applicant	Joined department as TA on
1.	Shashank Sharma	07.03.2014
2.	Mohit Chauhan	31.03.2014
3.	Anurag Gupta	11.03.2014
4.	Sunil Dutt Gaur	17.04.2014
5.	Naveen Jha	22.08.2014
6.	Shivani Kumar	03.03.2014
7.	Akhil Baliyan	01.05.2014
8.	Surendra Kumar	17.04.2014

ii. The above applicants were promoted to the grade of Senior Tax Assistant (STA) on below mentioned dates:



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SI No.	Name (Shri/Ms.)	Promotion to the grade of STA
1.	Shashank Sharma	04.08.2017
2.	Mohit Chauhan	04.08.2017
3.	Anurag Gupta	04.08.2017
4.	Sunil Dutt Gaur	04.08.2017
5.	Naveen Jha	04.08.2017
6.	Shivani Kumar	04.08.2017
7.	Akhil Baliyan	04.08.2017
8.	Surendra Kumar	04,09.2017

2. For "Transfer" to the grade of Intelligence Officer (IO), RRs of 1990 issued vide G.S.R498, dated 11.08.1990 stipulates as follows:

"...(2) Transfer from amongst Upper Division Clerks/Stenographers (Grade-III) who satisfy the following conditions, namely:

(a) Who have put in five years regular service as Upper Division Clerk/Stenographer (Grade-III) in the Directorates.

(b) Who have qualified at an examination held in this behalf. Upper Division Clerk/ Stenographer (Grade-III) selected on Transfer shall be designated as Intelligence Officer."

3. Apart from above grades. Stenographers Grade-II/ Assistants were also considered eligible for taking the departmental qualifying examination for promotion to the post of Intelligence Officers in compliance of Hon'ble CAT in order dated 21.08.1997, in OA No. 25/97 & subsequently by Board's letter F.No. C 18013/05/97-Ad III B, dated 27.10.1997. In the Cadre Restructuring of the Department, vide G.S.R. 730(E), dated 03.11.2004, Assistant of the Directorates were re- designated as Senior Tax Assistant (STA) while Upper Division Clerk (UDC) and Lower Division Clerk (LDC) were merged into a single cadre of Tax Assistant. The UDCs were re-designated as Senior Tax Assistants and the LDCs were redesignated as Tax Assistants after the Cadre Restructuring vide the said order dated 03.11.2004. It was further stipulated that TAs, after three years of regular service, can be promoted to the grade of STAs.

4. This office, vide letter F.No. A-34011/1/2007-Estt., dated 01.05.2008 informed Board that due to acute shortage of Intelligence Officers, STAs/Stenographer Gr.II, without length of



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service and TAs/ Stenographer Gr.III with five (5) years of service are being considered in DRI for promotion/ transfer to IOs.

5. An Examination Notice for promotion/transfer to the grade of IOs was issued, from the feeder grade of "STAs/ Stenographer Gr-II, without any length of qualifying service, & TA/ Stenographer Gr-III- who have rendered 5 years regular service in the grade in DRI/DGCEI. All the applicants were STAs when departmental examination for promotion to the grade of IO was issued Vide F.No. A-34011/01/2018-Estt., dated 21.02.2018. Accordingly, all the applicants were allowed to appear in the said examination and subsequently they were declared as successful in the written examination vide letter F.No. A- 34011/01/2018-Estt., 09.03.2018.

6. The process of examination, viva-voce and conduct of DPC, as stipulated in the DP&AR letter No. 32/1/74-AD (IV), dated 18.02.1975 could not be completed as this Directorate ceased to be the Cadre Controlling Authority since the Directorate General of Performance Management (hereinafter referred to as DGPM) was made the CCA for all the eighteen Directorates within CBIC including the DRI vide Order No. 02/Ad.IV/2018, issued from F.No. 11013/10/2016-Ad.IV, dated 12.02.2018. Subsequently it was clarified by the Board vide letter F.No. A-11013/09/2018 Ad.IV, dated 20.03.2018 that no promotion to be done by individual Directorates and only DGPM, being CCA can do the DPC and promotions.

7. The applicants filed an O.A. 2901/2018 before CAT (PB). The Hon'ble CAT disposed it on 02.08.2018 at the admission stage itself, without going into the merits of the case by directing the respondents to consider the representations of the applicants and to pass appropriate reasoned and speaking orders thereon within sixty days from the date of receipt of a certified copy of the order, in accordance with law. Accordingly, a speaking order dated 30.01.2019 was issued from DRI F.No. A-59011/16/2018-Estt (Pt.)/345, stating inter alia, as follows:

"in light of the Board's Order F.No. A-11013/10//2016-Ad.iv, dated 12.02.2018 that DGPM is the Cadre Controlling Authority (CCA) for all the Directorates, you are directed to approach DGPM. "

8. The applicants submitted their representation to DGPM and DGPM vide order dated 27.02.2019 rejected the same stating that Ministry vide letter dated 17.01.2019 has clarified that RRs. for the post of IO has been submitted to DoPT for approval and likely to finalized shortly.



9. The applicants again filed the present OA. This Directorate filed MA No. 2369/2023, seeking further extension of time by three months so that the impact on the seniority lists of the merged cadre employees could be examined in consultations with DGPM and the Central Board of Excise and Customs(CBIC). The Hon'ble CAT was pleased to grant an additional period of six weeks.

10. The matter has been examined. The eligibility condition for "Transfer" to the grade of IOs, as per the RRs of 1990 is as follows:

“...(2) Transfer from amongst Upper Division Clerks/Stenographers (Grade-III) who satisfy the following conditions, namely:

(a) Who have put in five years regular service as Upper Division Clerk/Stenographer (Grade-III) in the Directorates.

(b) Who have qualified at an examination held in this behalf Upper Division Clerk/ Stenographer (Grade-III) selected on Transfer shall be designated as Intelligence Officer.”

11. The feeder grade was amended in view of order passed by the Hon'ble CAT in order, in OA No. 25/97, dated 21.08.1997 filed by Shri R.K.Sharma & others Vs. Union of India followed by Board's letter F.No. C 18013/05/97-Ad III B, dated 27.10.1997 whereby, Stenographers Grade-II/ Assistants were also allowed to be considered as feeder grade.

12. Further, vide letter F.No. A-34011/I/2007-Estt., dated 01.05.2008 it was conveyed to the Board that due to acute shortage of Intelligence Officers, STAs/Stenographer Gr.II, without length of service and TAs/ Stenographer Gr.III with five (5) years of service are being considered in DRI for promotion/ transfer to IOs. A few DPCs were conducted following the revised eligibility.

13. Accordingly, the following grades are considered to be eligible as feeder grade for promotion to the grade of IO:

- i. Senior Tax Assistant- Without any length of qualifying service
- ii. Stenographer Gr.II- Without any length of qualifying service



iii. Stenographer Gr.III-Candidates who rendered 5 years regular service in the grade in DRI/DGCEI

iv. Tax Assistant-Candidates who rendered 5 years regular service in the grade in DRI/DGCEI

14. The issue whether "Transfer" as mentioned in the RRs will amount to promotion and the eligibility condition of crucial date, as per DoPT O.M. 22011/6/2013-Estt(D), dated 28.05.2014, would be applicable needs to be examined. In this regard, reliance is placed on the judgement of the Hon'ble CAT issued vide order dated 09.08.2011 in OA No. 434/2010, Shri **M.N. Narsimha Murthy v UOI**. The Hon'ble CAT held as follows:

a) 11.c) "The Grade pay of Intelligence Officer is definitely higher to that of STA even after VI Pay Commission as was so before the VI Pay Commission also. Thus, it is in spirit, if not in letter, a promotion, entitling for higher financial benefits.

b) 11.e) "In another related judgment in CA No.25/1997 filed before the Principal Bench of CAT, the Principal Bench has categorically used the word "promotion" for the post of Intelligence Officer, from the post of STA and other grades.

c) 11.h) ..It is clear from the wording used by the department while describing the examination as well as from OA No.25/1997 agitated before the Principal Bench that candidates well below the post of Intelligence Officer and carrying much lower Grade pay have been allowed to be considered for filling up the vacancies of Intelligence Officers. Thus, in spirit if not in letter of the Recruitment Rules of 11-08-1990, the post of Intelligence Officer is being filled by promotion.

d) 11. In view of the above, we have no doubt that the post of Intelligence Officer has been getting filled by promotion and cadres of either STA or Stenographer Gr. II or Assistant are only to be treated as feeder cadres."

15. In view of the above, it is unambiguous that the appointment to the grade of IO from the feeder grade is nothing but promotion. Accordingly, the eligibility of the applicant for promotion against the post during the vacancy year 2017-18, as claimed by them in their OA, would be determined on the crucial date of 01.04.2017. DoPT OM No. 22011/6/2013-Estt (D), dated 28.05.2014 states that:



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"It has been decided that the crucial date of eligibility shall be 1st April of the vacancy year in case of financial year based vacancy year i.e. where the Annual Performance Appraisal Reports (APARS) are written financial year-wise. ... These instructions shall come into force in respect of vacancy year 2015-16 (financial year) commencing from April 1, 2015 ...and shall, accordingly, be applicable of all such subsequent vacancy years."

From the facts on record, it is evident that the applicants were not in the grade of STAs on 01.04.2017, nor did they have requisite 5 years of service in the grade of TAs on the said crucial date.

16. It is also on record that the viva-voce & DPC for transfer/promotion was not completed for the above applicants in view of the fact that DRI ceased to be the CCA before the process of examination, viva-voce and DPC could be completed.

17. Considering the aforementioned facts, it is evident that none of the applicants was eligible for consideration for appointment to the post of Intelligence Officer for vacancy year 2017-18, as on 1.4.2017.

ORDER

18. In view of the aforementioned discussions and considering the Directorate of Revenue Intelligence and the Directorate of Anti-Evasion (Group C and D posts) Recruitment Rules, 1990, none of the applicants are eligible for consideration for appointment in the grade of Intelligence Officer for the vacancy year 2017-18. Accordingly, their request for transfer/promotion to the grade of IO cannot be accepted.

28.08.2023

(Bharti Sharma)

Joint Director (Admn.)"

4. Alleging that the aforesaid order dated 28 August 2023 was contumacious of the order dated 28 March 2023, passed by the Tribunal in OA 1788/2019, the respondent instituted CP 388/2023 before the Tribunal.



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5. The impugned interim order has been passed by the Tribunal in the said contempt petition.
6. To our mind, the Tribunal materially erred in passing the impugned order. The direction issued by the Tribunal in its judgment dated 28 March 2023 in OA 1788/2019 was only to consider the respondents for promotion in accordance with the Recruitment Rules⁷ of 11 August 1990.
7. Pursuant thereto, the order dated 28 August 2023 *supra* was passed by the petitioner.
8. Ms. Amita Singh, learned Counsel for the respondents, submitted that the Tribunal was well within its jurisdiction in returning the observation contained in paras 9 and 14 of the order under challenge.
9. She submits that, if the petitioners had permitted her clients to appear in the Limited Departmental Competitive Examination⁸, which was held as per the Circular dated 21 February 2018, it amounted, *ipso facto*, to a recognition of the respondents' eligibility for promotion as per the RRs. As such, she submits that the Tribunal was justified in its observation, in para 14 of the impugned order, that once the respondents had been permitted to participate in the LDCE, they could not have been denied promotion.

⁷ "RRs" hereinafter

⁸ "LDCE" hereinafter



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10. The fact that the respondents have participated in the LDCE of 2018 was specifically noted by the Tribunal in its judgment dated 28 March 2023, while disposing of OA 1788/2019. Despite this, the Tribunal did not go ahead to direct that the respondents be given promotion. They only faulted the petitioner for not having considered the respondents as per the RRs. The direction to the petitioners was specifically to consider the case of the respondents for promotion as per the RRs and to take a decision in that regard.

11. Rightly or wrongly, the petitioners have taken a decision regarding the entitlement of the respondents for promotion as per the order dated 28 August 2023. A reading of the order reveals that the provisions of the RRs have also been taken into consideration.

12. In that view of the matter, we are of the *prima facie* opinion that the Tribunal was in error in returning, in para 14 of the impugned order, that the respondents could not have been denied promotion. Whether the respondents were, or were not, entitled to promotion, was not an aspect which the Tribunal could legitimately have considered while dealing with a contempt petition, in the absence of any specific direction, in the order of which contempt was alleged, to promote the respondents. By so holding, the Tribunal has, in a contempt petition, converted an order which was only to direct the respondents to be granted promotion, to an order which effectively directs that they should be given promotion.

13. Such a direction could not have been passed in contempt



proceedings. A court seized of contempt proceedings can find the alleged contemnor guilty, or not guilty, of having committed contempt, and proceed accordingly. It cannot issue substantive directions, or grant substantive relief to the applicants before it. Any such directions would be manifestly in exercise of jurisdiction. In **V.M. Manohar Prasad v N. Ratnam Raju**⁹, the proposition was thus stated:

“7. ... Secondly, it is submitted that the Contempt Court had no jurisdiction to issue any direction providing any substantive relief to the petitioners moving the contempt petition. In support of this contention reliance has been placed upon decisions of this Court in **Jharieswar Prasad Paul v Tarak Nath Ganguly**¹⁰ and **Notified Area Council v Bishnu C. Bhoi**¹¹. *There is no doubt about the position under the law that in contempt proceedings no further directions could be issued by the court. In case it is found that there is violation of the order passed by the court the court may punish the contemnor otherwise notice of contempt is to be discharged. An order passed in the contempt petition, could not be a supplemental order to the main order granting relief.*”

(Emphasis supplied)

14. It requires to be remembered that a contempt proceeding is a *lis* between the court and the alleged contemnor. The contempt petitioner is a mere informer. He gets no substantive relief by moving for contempt; except, perhaps, the spiritual satisfaction in seeing his perceived oppressor brought to book. Contempt is an affront on the authority of the Court, and if anyone can justifiably take umbrage at it, it is the Court alone, and no one else.

15. This position stands underscored in the following passage from **D.N. Taneja v Bhajan Lal**¹²:

⁹ (2004) 13 SCC 610

¹⁰ (2002) 5 SCC 352

¹¹ (2001) 10 SCC 636

¹² (1988) 3 SCC 26



“12. ...A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It may be one of the reasons which weighed with the legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under Section 19(1) can only be the contemnor who has been punished for contempt of court.”

In fact, the concluding sentence in this passage may throw open the issue of whether a writ petition would lie against an order passed by the Tribunal rejecting a contempt petition. Some such petitions have come up before us. This is not such a petition; ergo, we say no more.

16. Contempt is not a means to secure execution. In *R.N. Dey v Bhagyabati Pramanik*¹³, it was held:

“7. We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceeding, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud.”

17. Apropos the indicia of contempt, the Supreme Court has, more

¹³ (2000) 4 SCC 400



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recently, ruled thus, in ***Rama Narang v Ramesh Narang***¹⁴:

“86. Apart from that, for bringing an action for civil contempt, the petitioner has to satisfy the court that there has been a wilful disobedience of any judgment, decree, direction, order, writ or other process of the court. It will be relevant to refer to para 9 of the judgment of this court in ***Niaz Mohammad v State of Haryana***¹⁵:

“9. Section 2(b) of the Contempt of Courts Act, 1971 (hereinafter referred to as “the Act”) defines “civil contempt” to mean ‘wilful disobedience to any judgment, decree, direction, order, writ or other process of a court ...’. Where the contempt consists in failure to comply with or carry out an order of a court made in favour of a party, it is a civil contempt. The person or persons in whose favour such order or direction has been made can move the court for initiating proceeding for contempt against the alleged contemnor, with a view to enforce the right flowing from the order or direction in question. But such a proceeding is not like an execution proceeding under the Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemnor should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemnor is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional. The civil court while executing a decree against the judgment-debtor is not concerned and bothered whether the disobedience to any judgment, or decree, was wilful. Once a decree has been passed it is the duty of the court to execute the decree whatever may be consequence thereof. But while examining the grievance of the person who has invoked the jurisdiction of the court to initiate the proceeding for contempt for disobedience of its order, before any such contemnor is held guilty and punished, the

¹⁴ (2021) 15 SCC 338

¹⁵ (1994) 6 SCC 332



court has to record a finding that such disobedience was wilful and intentional. If from the circumstances of a particular case, brought to the notice of the court, the court is satisfied that although there has been a disobedience 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 court may not punish the alleged contemnor.”

87. *It can thus be seen that this Court has held that the contempt proceeding is not like an execution proceeding under the Code of Civil Procedure.* It has been held that though the parties in whose favour an order has been passed is entitled to the benefits of such order, but the Court while considering the issue as to whether the alleged contemnor should be punished for not having complied with and carried out the directions of the Court has to take into consideration all facts and circumstances of a particular case. It has been held that is why the framers of the Act while defining civil contempt have said that it must be wilful disobedience of any judgment, decree, direction, order, writ or other process of the Court. It has been held that before punishing the contemnor for non-compliance of the decision of the Court, the Court must not only be satisfied about the disobedience of any judgment, decree, direction, writ or other process but should also be satisfied that such disobedience was wilful and intentional. Though, the civil court while executing a decree against the judgment-debtor is not concerned and bothered as to whether the disobedience to any judgment or decree was wilful and once the decree had been passed, it was the duty of the court to execute the decree, whatever may be the consequences thereof. In a contempt proceeding before a contemnor is held guilty and punished, the Court has to record a finding, that such disobedience was wilful and intentional. It has been held that if from the circumstances of a particular case, though the Court is satisfied that there has been a disobedience but such disobedience is the result of some compelling circumstances, under which it is not possible for the contemnor to comply with the same, the Court may not punish the alleged contemnor.

88. It will also be apposite to refer to the following observations of this Court in ***Kanwar Singh Saini v High Court of Delhi***¹⁶, taking a similar view:

“30. In an appropriate case where exceptional circumstances exist, the court may also resort to the provisions applicable in case of civil contempt, in case of violation/breach of undertaking/judgment/order or decree.

¹⁶ (2012) 4 SCC 307



However, before passing any final order on such application, the court must satisfy itself that there is violation of such judgment, decree, direction or order and such disobedience is wilful and intentional. Though in a case of execution of a decree, the executing court may not be bothered whether the disobedience of the decree is wilful or not and the court is bound to execute a decree whatever may be the consequence thereof. In a contempt proceeding, the alleged contemnor may satisfy the court that disobedience has been under some compelling circumstances, and in that situation, no punishment can be awarded to him. (See *Niaz Mohammad v State of Haryana*; *Bank of Baroda v Sadruddin Hasan Daya*¹⁷ and *Rama Narang v Ramesh Narang*¹⁸) Thus, for violation of a judgment or decree provisions of the criminal contempt are not attracted.”

89. It will also be appropriate to refer to the further observations made by this Court in para 38 of the said judgment:

“38. The contempt proceedings being quasi-criminal in nature, the standard of proof required is in the same manner as in other criminal cases. The alleged contemnor is entitled to the protection of all safeguards/rights which are provided in the criminal jurisprudence, including the benefit of doubt. There must be a clear-cut case of obstruction of administration of justice by a party intentionally to bring the matter within the ambit of the said provision. The case should not rest only on surmises and conjectures. In *Debabrata Bandopadhyay v State of W.B.*¹⁹, this Court observed as under:

‘9. A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the judge of the accusation. It behoves *the court to act with as great circumspection* as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explainable otherwise, arises that the contemnor must be punished. ... Punishment under the law of contempt is called for *when the lapse is deliberate* and in disregard of one's duty and in

¹⁷ (2004) 1 SCC 360

¹⁸ (2006) 11 SCC 114

¹⁹ AIR 1969 SC 189



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defiance of authority. *To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.*”

(Emphasis in original)

18. At this stage, the respondent intervenes to submit that she is agreeable not to pursue the contempt proceedings, subject to her client being granted liberty to challenge the order dated 28 August 2023.

19. Accordingly, with consent of parties, the impugned order is set aside with liberty to the respondents to assail the order dated 28 August 2023 by way of appropriate proceedings in accordance with law.

20. It is clarified that this order does not comment in any manner on the merit of the order dated 28 August 2023 or the entitlement of the respondents to promotion.

21. The writ petition stands allowed in the aforesaid terms.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 12, 2024

dsn

Click here to check corrigendum, if any