

SUPREME COURT OF INDIA

R. Mohajan

Vs.

Shefali Sengupta

C.A.No.3297 of 2012

(P. Sathasivam and J. Chelameswar JJ.)

30.03.2012

JUDGMENT

P. SATHASIVAM, J.

1. Leave granted.

2. This appeal is filed against the order dated 11.06.2010 passed by the Central Administrative Tribunal, Calcutta Bench in CPC No. 113 of 2005 (O.A. No. 203 of 1997) whereby the Tribunal passed an order directing the appellants herein to be present in court on the next date of hearing for receiving the charges of contempt and adjourned the matter to 30.07.2010.

3. Brief facts:

(a) The respondents herein were initially employed on the post of L.D.C. in DGSD, Calcutta on various dates. Respondent Nos. 1 & 2 herein were further promoted as UDC in DGSD. Their services were being utilized in purchase department for procurement against the ad hoc indents of the indenting Ministries/Departments. A decision was taken by the Central Government that the work relating to procurement could be transferred to the concerned department and in this view, the respondents were transferred vide order dated 08.04.1992 to the Office of General Manager, Eastern Railway, S.E. Railway, C.L.W. and Metro Railway. They were placed under the disposal of the Controller of Stores, S.E. Railway in their existing capacity, pay and grade w.e.f. 24.04.1992.

(b) On 18.10.1994, the Railway Board issued an order regarding the absorbed persons, who came to be transferred from DGSD to Zonal Railways and Production Units wherein it has been mentioned that these employees may be absorbed in the Railways to which they have been transferred and assigned seniority on the basis of date of their regular promotion/appointment in the relevant grade. In terms of the order passed by the Railway Board, their absorption and seniority list was issued vide Office Order dated 10.02.1995. Based on the seniority list, they were given promotion to the next post of Head Clerk and Senior Clerk vide Office Orders dated 23.06.1995 and 31.10.1995 respectively. Subsequently their seniority was published in the grade of Head Clerk and Senior Clerk vide orders dated 28.07.2000, 12.07.2001, 29.10.2003, and 27.01.1994 placing at their appropriate place as per their original seniority assigned vide Office Order dated 10.02.1995.

(c) Questioning the said order of seniority, the respondents herein made several verbal representations to the authorities for promotion retrospectively, but no steps have been taken by them. Challenging the seniority list, the respondents filed O.A. No. 203 of 1997 before the Central Administrative Tribunal, Calcutta Bench, Kolkata. By order dated 09.05.2005, the Tribunal allowed the application filed by the respondents herein with a direction to the Department (appellants herein) to grant them their due seniority from the date of their appointment on their respective posts in DGSD prior to their transfers to the Railways and they shall also be entitled to the benefits of next below rule with all consequential benefits except any arrear that may be payable shall be restricted to from the date of filing of the application and gave three months time to comply with the order. By office order dated 20.06.2005, the Chief Personnel Officer informed the respondents herein that their names do not come under the zone of consideration as per the seniority list published on 27.01.2004 and, therefore, they are not considered for the post of O.S. Grade II on restructuring basis.

(d) Not satisfied with the order passed by the Chief Personnel Officer, the respondents filed CPC No. 113 of 2005 (OA No.203 of 1997) before the Tribunal. The Tribunal, by order dated 07.04.2008 observed that there is difference of three years in the matter of promotion and granted two months' time to the Department to comply with the directions and directed to list the

matter on 17.06.2008 for orders. As the appellants herein were not fully implementing the orders, the Tribunal, vide order dated 23.03.2010, directed for issuance of Rule 8 notice to the contemnors/appellants herein returnable after two months and directed to list the matter for orders on 03.05.2010. On 30.03.2010, counsel for the contemnors/appellants herein appeared before the Tribunal and placed on record various documents to show that the orders were, in fact, complied with. Not satisfied with the report filed by the Department, the Tribunal passed the impugned order dated 11.06.2010 directing the contemnors/appellants herein to present before it to receive charges of contempt and adjourned the matter for 30.07.2010. (e) Against the said order, the appellants/Contemnors preferred this appeal by way of special leave before this Court.

4. Heard Mr. Mohan Jain, learned Additional Solicitor General for the appellants and Mr. R.K. Gupta, learned counsel for the respondents.

5. At the outset, Mr. R.K. Gupta, learned counsel for the respondents raised a preliminary objection as to the maintainability of the present appeal by the appellants before this Court without exercising the remedy before the High Court for which he relied on the decision of the Constitution Bench of this Court in Ors., (1997) 3 SCC 261. On the other hand, Mr. Mohan Jain, learned Additional Solicitor General, by drawing our attention to Section 19 of the Contempt of Courts Act, 1971, submitted that the present appeal by way of special leave is maintainable and is the appropriate remedy for the appellants. In this regard, he heavily relied on a three-Judge Bench decision of this Court in Ors., (2001) 1 SCC 516 which interpreted the decision of the Constitution Bench of this Court rendered in L. Chandra Kumar (supra).

6. Before going into the merits of the impugned order of the Tribunal, let us resolve the maintainability of the present appeal.

7. After the order dated 09.05.2005 passed by the Tribunal in O.A. No. 203 of 1997, the respondents, who are the beneficiaries of that order, filed C.P.C. No. 113 of 2005 before the Central Administrative Tribunal, Calcutta Bench contending that the order has not been implemented in full by the appellants herein. After considering its earlier order dated 09.05.2005 and the relief granted to the personnel, the Tribunal, by the impugned order, directed the contemnors (appellants herein) to be present in Court on the next date of hearing and to receive the charges of contempt. It is clear from the above direction that the said order

came to be passed in a contempt proceeding. In such circumstances, the aggrieved parties are at liberty to approach this Court without exercising the remedy before the High Court, as observed in *L. Chandra Kumar* (supra).

8. In *L. Chandra Kumar* (supra), the Constitution Bench with regard to approaching the High Court against the order of the CAT has held as under:

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In *R.K. Jain* case, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforesaid contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above- mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of

the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

It is clear from the above dictum that no appeal from the decision of the Tribunal will directly lie before this Court under Article 136 of the Constitution of India, but instead, the aggrieved party has to move the High Court under Articles 226/227 of the Constitution and thereafter from the decision of the Division Bench of the High Court, the aggrieved parties are free to approach this Court. In view of the above direction, though the learned counsel for the respondents is right in contending the same, however, the Constitution Bench had no occasion to consider the order/orders passed by the CAT in contempt proceedings. This aspect has been considered by the subsequent three-Judge Bench decision of this Court in *T. Sudhakar Prasad* (supra). The question posed before the Court was that whether the Administrative Tribunals set up under the provisions of the Administrative Tribunals Act, 1985, do they or do they not have power to punish for their contempt? After going into the decision in *L. Chandra Kumar* (supra) in detail, this Court has concluded as under: 17. It is thus clear that the Constitution Bench has not declared the provisions of Article 323-A(2)(b) or Article 323-B(3)(d) or Section 17 of the Act ultra vires the Constitution. The High Court has, in its judgment under appeal, noted with emphasis the Tribunal having been compared to like courts of first instance and then proceeded to hold that the status of Administrative Tribunals having been held to be equivalent to courts or Tribunals subordinate to the High Court the jurisdiction to hear their own contempt was lost by the Administrative Tribunals and the only course available to them was either to make a reference to the High Court or to file a complaint under Sections 193, 219 and 228 IPC as provided by Section 30 of the Act. The High Court has proceeded on the reasoning that the Tribunal having been held to be subordinate to the High Court for the purpose of Articles 226/227 of the Constitution and its decisions having been subjected to judicial review jurisdiction of the High Court under Articles 226/227 of the Constitution, the right to file an appeal to the Supreme Court against an order passed by the Tribunal punishing for contempt under Section 17 of the Act was defeated and on these twin grounds Section 17 of the Act became unworkable and unconstitutional. We do not find any basis for such conclusion or inference being drawn from the judgments of this Court in the cases of *Supreme Court Bar Assn.* or *L. Chandra Kumar* or any other decision of this Court. The Constitution Bench has in so many words said that the jurisdiction conferred

on the High Courts under Articles 226/227 could not be taken away by conferring the same on any court or Tribunal and jurisdiction hitherto exercised by the High Court now legislatively conferred on Tribunals to the exclusion of the High Court on specified matters, did not amount to assigning Tribunals a status of substitute for the High Court but such jurisdiction was capable of being conferred additionally or supplementally on any court or Tribunal which is not a concept strange to the scheme of the Constitution more so in view of Articles 323-A and 323-B. Clause (2)(b) of Article 323-A specifically empowers Parliament to enact a law specifying the jurisdiction and powers, including the power to punish for contempt, being conferred on the Administrative Tribunals constituted under Article 323-A. Section 17 of the Act derives its legislative sanctity therefrom. The power of the High Court to punish for contempt of itself under Article 215 of the Constitution remains intact but the jurisdiction, power and authority to hear and decide the matters covered by sub-section (1) of Section 14 of the Act having been conferred on the Administrative Tribunals the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which vested in the High Court to punish for contempt of itself in the matters now falling within the jurisdiction of Tribunals if those matters would have continued to be heard by the High Court has now been conferred on the Administrative Tribunals under Section 17 of the Act. The jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of the Contempt of Courts Act, 1971. The need for enacting Section 17 arose, firstly, to avoid doubts, and secondly, because the Tribunals are not courts of record. While holding the proceedings under Section 17 of the Act the Tribunal remains a Tribunal and so would be amenable to the jurisdiction of the High Court under Articles 226/227 of the Constitution subject to the well-established rules of self-restraint governing the discretion of the High Court to interfere with the pending proceedings and upset the interim or interlocutory orders of the Tribunals. However any order or decision of the Tribunal punishing for contempt shall be appealable only to the Supreme Court within 60 days from the date of the order appealed against in view of the specific provision contained in Section 19 of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985. Section 17 of the Administrative Tribunals Act is a piece of legislation by reference. The provisions of the Contempt of Courts Act are not as if lifted and incorporated in the text of the Administrative Tribunals Act (as is in the case of legislation by incorporation); they remain there where they are, yet while

reading the provisions of the Contempt of Courts Act in the context of Tribunals, the same will be so read as to read the word Tribunal in place of the word High Court wherever it occurs, subject to the modifications set out in Section 17 of the Administrative Tribunals Act. Section 19 of the Contempt of Courts Act, 1971 provides for appeals. In its text also by virtue of Section 17 of the Administrative Tribunals Act, 1985 the word High Court shall be read as Tribunal. Here, by way of abundant caution, we make it clear that the concept of intra-Tribunal appeals i.e. appeal from an order or decision of a Member of a Tribunal sitting singly to a Bench of not less than two Members of the Tribunal is alien to the Administrative Tribunals Act, 1985. The question of any order made under the provisions of the Contempt of Courts Act, 1971 by a Member of the Tribunal sitting singly, if the rules of business framed by the Tribunal or the appropriate Government permit such hearing, being subjected to an appeal before a Bench of two or more Members of the Tribunal therefore does not arise. Any order or decision of the Tribunal punishing for contempt is appealable under Section 19 of the Act to the Supreme Court only. The Supreme Court in the case of L. Chandra Kumar has nowhere said that orders of the Tribunal holding the contemner guilty and punishing for contempt shall also be subject to judicial scrutiny of the High Court under Articles 226/227 of the Constitution in spite of remedy of statutory appeal provided by Section 19 of the Contempt of Courts Act being available. The distinction between orders passed by the Administrative Tribunal on matters covered by Section 14(1) of the Administrative Tribunals Act and orders punishing for contempt under Section 19 of the Contempt of Courts Act read with Section 17 of the Administrative Tribunals Act, is this: as against the former there is no remedy of appeal statutorily provided, but as against the latter statutory remedy of appeal is provided by Section 19 of the Contempt of Courts Act itself. (Emphasis supplied)

9. In view of the clarification by the three-Judge Bench of this Court in T. Sudhakar Prasad (supra), we reject the objection as to the maintainability of the present appeal and hold the same as maintainable.

10. Now let us consider the merits of the impugned order. Since we are concerned about the question as to whether the directions of the CAT have been implemented or not, there is no need to refer all the factual details once again. The operative part of the directions of the order dated 09.05.2005 of the CAT reads as under:

6. In this view of what has been said and discussed above, this original application is allowed with a direction to the respondents to grant them their due seniority from the date of their appointment on their respective posts in DGSD prior to their transfers to the present organization and they shall also be entitled to the benefits of next below rule with all consequential benefits except any arrear that may be payable shall be restricted to from the date of filing of this original application. However, in case the applicants have already been granted the due benefits, the details of the same shall be furnished to the applicants. This order shall be complied within a period of three months from the date of the receipt of a copy of this order. However, there shall be no order as to costs.

Since according to the respondents, the said directions have not been complied with, they filed contempt petition being C.P.C. No. 113 of 2005 before the CAT. It is useful to refer that pursuant to the representations made by the respondents herein, in terms of the directions of the CAT dated 09.05.2005, S.E. Railways, who is the relevant authority, by communication dated 20.06.2005 intimated the following information to all the respondents herein. The same are as follows:

SOUTH EASTERN RAILWAY

CPO'S OFFICE/GRC

Date: 20.6.2005

No. P/Stores/CAT/CAL/OA 203-97

To

1. Smt. Shefali Sengupta, Head Clerk/COS's Office/GRC
2. Sri Probir Kumar Nath, Head Clerk/COS's Office/GRC
3. Sri Apurba Kumar Mukherjee. Sr. Clerk/COS's Office/GRC (THROUGH Sr. MATERIAL MANAGER (MP)/GRC

Ref :

1) COS/GRC's letter No. S/58/A/14/Pt.III/Gr.C/78 dated 27.5.2005 2) CAT/CAL's order dated 9.5.05 in OA No. 203/1997

In response to representation dated 8.6.2005 submitted by the above Applicants and in compliance of Hon'ble CAT/KOL's order dated 9.5.2005 in OA No. 203/1997 the following information/compliance report is furnished to the representationist for their appraisal.

That in terms of this office order No. OP/Stores/39A dated 10.2.95 their absorption and seniority case had been settled according to Rly. Board's guidelines communicated to this Rly. Vide their letter No. E(NG) I/92/TR/7 dated 18.10.94 assigning their seniority from the date of regular promotion/appointment to the relevant grade they were holding at the time of transfer to this Railway as follows:

S.N	S.No.	Name	Designation	Date of appointment	Date of promotion to the next grade	Scale
1	30.5.1975	Smt. Shefali	Clerk	27.2.82	(1200-2040)	1
2	6.2.1976	Sr. Probir Kr. Nath	Jr. Clerk	1.1.1983	(950-1500)	2
3	17.11.1982	Sri Apurba Kr. Mukherjee	Jr. Clerk	31.3.1983	(750-940)	3
4	31.3.1983	Kum. Khama Banerjee	Peon			4

Based on the assignment of seniority, they were given promotion to the next post of Hd. Clerk and Sr. Clerk vide OO No. P/Stores/197 dated 23.6.95 and P/Stores/315 dt. 31.10.95 respectively.

Subsequently their seniority was published in the grade of Head Clerk and Senior Clerk vide order No. P/Stores/Revised Seniority/2000 dated 28.07.2000, P/Stores/Seniority/COS dated 12.07.2001 and P/Stores/Seniority list/COS 29.10.2003, P/Stores/Seniority List/COS dated 27.01.1994 placing at their appropriate place as per their original seniority assigned vide Office Order dated 10.02.1995.

Thus it is clear from the above position that their date of promotion in their earlier cadre of DGSD has been protected and they have been assigned seniority in Railway considering length of service in the grade of DGSD.

In the seniority list dated 27.1.2004, Smt. Sengupta and Sri Nath are at S.Nos. 20 21 in the present selection staff in general seniority upto 9 has

been called 5 persons senior to them in the general seniority are also not called because in the present selection of SO Gr.II, COS's office in scale Rs.5500-9000/- (RSRP) their name do not come under the zone of consideration as per the seniority list published in the year mentioned above. Hence they are not considered for the post of OS Gr. II on restructuring basis.

The representationists may be informed accordingly serving one copy of this letter to each.

Sd/-

(B.N. SOREN)

Sr. Personnel Officer

(W)

Copy to: COS/GRC for information and necessary action.

Sd/-

For Chief Personnel Officer

11. Though the CAT has expressed that the said compliance is not in tune with its order dated 09.05.2005, as rightly pointed out by Mr. Mohan Jain, learned ASG, that as per the order, promotion was granted to the respondents from the earliest date which is admissible as per rules and as provided by the Railway Board. As pointed out by the appellants, the Tribunal has ignored the fact that the consequential benefits at par with juniors have been complied with properly. This was explained as under: There was difference of 3 years in the matter of promotion for Respondent Nos. 1 & 2. In terms of Railway Boards Lr. No. E(NG) 1/9/2Tr/7 dated 18.10.1994 Smt. Shefali Sengupta and Prabir Kumar Nath were granted seniority of the post of Sr. Clerk w.e.f. 1.1.83 and Sri Apurba Kumar Mukherjee was granted seniority of the post of Jr. Clerk w.e.f. 27.11.82 i.e. the date of promotion/appointment at DGSD.

In terms of Railway Board's Lr. No. E(NG) I-96/SRG/22 dated 30.10.96 the seniority assigned to DGSD transferors on absorption in terms of Board's

letter dated 18.10.1994 would be operative in respect of promotions made/to be made after the date of their absorption and that the same would not affect the promotions already ordered on regular basis prior to the date of such absorption.

Since Smt. Shefali Sengupta and Prabir Kumar Nath joined as Sr. Clerk on 24.4.92 are not entitled for a promotion prior to 24.4.92 and accordingly they were given promotional benefits at par with their Junior Sri Subrata Saha who was Sr. Clerk on the date of their joining on 24.4.92. Accordingly, they were promoted to the post of Head Clerk at par with their Junior Sri Saha w.e.f. 30.9.92. Since Sri S.K. Talukdar had already been promoted as OS-II prior to their joining the consequential benefit of promotion would not be extended in terms of Board's Lr. Dated 30.10.96. Similarly Maniral Islam whose date of appointment to Sr. Clerk on 1.2.88 S.E. Rly was 3.5.84 promoted to Sr. Clerk on 1.2.88 prior to joining of Apurba Kr. Mukherjee on 24.4.92. Hence Sri Mukherjee will not get the benefit at par with Maniral Islam as per Board's letter dated 30.10.96, thus the order has been fully complied with and there is no difference in promotion for respondent Nos. 1 2.

12. In addition to the same, the appellants have also pointed out that the Tribunal wrongly misunderstood that the claim of respondent Nos. 1 2 for further promotion with Sri Talukdar, who was promoted as Sr. Clerk on 14.02.83 which is unsustainable as he had been promoted to the higher grade of Head Clerk prior to their joining the department and those particulars are available in the office records. It is also pointed out that the seniority of the respondents has been protected and granting promotion to a grade to which they had not yet obtained in their parent department would not only deprive promotional benefit to those who have been serving in the department but would involve the promotion policy being revised. While considering the seniority or promotion, the Court cannot go into and examine the same contrary to the Rules/Policy applicable to the persons concerned framed by the Government.

13. In the light of the above discussion and of the factual information furnished, we are unable to sustain the impugned direction of the Tribunal in the order dated 11.06.2010, consequently the same is set aside. Inasmuch as the appellants have complied with the earlier order of the Tribunal dated 09.05.2005, the contempt petition is dismissed. The appeal is allowed. No order as to costs.