

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

CONTEMPT APPLICATION NO.58 OF 2016

IN

ORIGINAL APPLICATION NO.422 OF 2014

Shri Sharad Balkrishna Pawaskar)
 Working in the office of Agricultural & ADF Department,)
 Mantralaya, Mumbai 400 032.)
 R/o. 303/35, D Parijat Sadan, Mugbhat Cross Lane,)
 Girgaon, Mumbai 4.) **.. Applicant**

Versus

1. Shri Mukesh Khullar,)
 The Principal Secretary (Services),)
 General Administration Department,)
 The State of Maharashtra,)
 Having office at Mantralaya,)
 Mumbai 400 032.)

2. Shri Swadhin Kshatriya,)
 The Chief Secretary, State of Maharashtra,)
 Having office at Mantralaya, Mumbai 400 032.)

..Respondents

Shri B.A. Bandiwadekar, the learned Advocate for the Applicant.

Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

CORAM : JUSTICE SHRI A.H. JOSHI, CHAIRMAN
 SHRI RAJIV AGARWAL, VICE-CHAIRMAN

RESERVED ON : 30.11.2016.

PRONOUNCED ON : .12.2016.

PER : JUSTICE SHRI A.H. JOSHI, CHAIRMAN

J U D G M E N T

1. Heard Shri B.A. Bandiwadekar the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents, and perused the Original Application, annexures thereto and affidavit-in-reply.

2. The Applicant is aggrieved by the order passed by the Government on 11.04.2014, by which promotions were granted to 18 officers to the post of Deputy Secretary, while Applicant was not promoted. Therefore, Applicant has filed present Original Application.

3. In the Original Application, the Applicant had prayed for reliefs which are, in ready reference, quoted below :-

“9. Reliefs sought :

- a] By a suitable order, this Hon’ble Tribunal may be pleased to set aside the order dated 11.4.2011 passed by the Respondent No.1 [EXHIBIT-A] under which he declined to promote the Petitioner ahead of the Respondent No.2 to the post of the Deputy Secretary from the post of Under Secretary and accordingly the Petitioner be granted all the consequential service benefits including the deemed date of promotion from 30.8.2013, as if the impugned order had not been passed.
- 9[b] By a suitable order / direction, this Hon’ble Tribunal may be pleased to direct the Respondent No.1 to forthwith convene the meeting of the Establishment Board and to place the case of the Petitioner for promotion to the post of Deputy Secretary and to give effect to the decision of the Hon’ble Tribunal dated 12.12.2014 rendered in the O.A.No.423 of 2014 while considered the case of the Petitioner.
- 9[c] That accordingly the Respondent No.1 be directed to forthwith consider the case of the Petitioner for promotion to the post of Deputy Secretary and promote him accordingly, if found suitable and also to grant him all the consequential service benefits including the monetary benefits and the deemed date of seniority all within a period of 4 weeks from the date of the order of the Hon’ble Tribunal.”

(Quoted from page 13 and 13(A) of O.A. paper book.)

4. In prayer 9(b) quoted hereinbefore, the Applicant had prayed for a direction to implement the order dated 12.12.2014 passed in O.A.No.423/2014. Operative order passed in O.A.No.423/2014 as contained in paragraph no.29, thereof reads as follows :-

“29. In view of the analysis in the foregoing paras, from Para 15 supra onwards, and in the light of the findings in the judgments relied upon by the applicant (Para 14 supra), the impugned communications are quashed and set aside. The adverse remarks in the ACRs of 2010-11, 2011-12, 2012-13 (part) are expunged and accordingly orders thereof should be recorded in the said CRs prescribed. In view thereof, the remarks of the reporting officer are treated as conclusive and final. He should be held eligible for consequential service benefits. The OA No.423 of 2014 is, thus, allowed. No order as to costs.”

(Quoted from page 81-P of the O.A. paper book.)

5. This Tribunal had heard O.A.No.422/2014 and decided it by judgment dated 30.10.2015. Operative order is contained in paragraph No.6 of order passed therein.

Text of paragraph No.6, reads as follows :-

“6. As this Tribunal has ordered that adverse remarks in the ACRs of the Applicant for the years 2010-2011, 2011-2012 and 2012-2013 (part) may be expunged and the aforesaid order has been upheld by the Hon’ble Bombay High Court, the prayer of the Applicant that the Respondent No.1 may be directed to convene the meeting of the Establishment Board to consider the case of the Applicant for promotion to the post of Deputy Secretary is accepted. The Respondent No.1 is directed to convene the meeting of appropriate Establishment Board within a period of four weeks from the date of this order to consider the case of the Applicant for promotion to the post of Deputy Secretary. This O.A. is allowed accordingly with no order as to costs.”

(Quoted paragraph 6, page 21 and 22 of the O.A. paper book.)

6. It is thus evident that this Tribunal gave direction to convene meeting of Establishment board and to consider Applicant’s case for promotion, as is evident from the underlined text contained in the foregoing paragraph.

7. After the judgment of this Tribunal in O.A.No.422/2014, the Applicant has furnished request letter dated 25.02.2016 at Exhibit-G, page 94 and 27.04.2016 at Exhibit-H, page 95, seeking implementation of the order passed by this Tribunal in O.A.No.422 of 2014.

8. Applicant’s communication dated 27.04.2016, Exhibit-H, at page 95 is replied by the Deputy Secretary of G.A.D. by letter dated 02.05.2016, copy whereof is at Exhibit-I, page 96 of Original Application. By said letter dated 02.05.2016 the Applicant is informed that eligibility has been examined by the Establishment Board in the meeting held on 07.11.2015, and thereafter the Establishment Board has forwarded the recommendations to General Administration Tribunal (G.A.D.) for further action.

9. After receipt of letter dated 02.05.2016 (Exhibit-I), Applicant sought information under R.T.I. Act by submitting application dated 03.05.1996 (Exhibit-J, page 97).

10. The office of Respondent / the General Administration Department has furnished to the Applicant the information which was sought by him, along with letter dated 07.05.2016, (copies whereof are placed on record by the Applicant at page 99 to 108).

11. Thereafter, i.e. after receipt of communications dated 2.5.2016 and 7.5.2016 (Exhibit I and Exhibit J), the Applicant has served notice on the Respondents on 27.06.2016 and has again forwarded copy of judgment and demanded to implement the order and notified that, in the event of failure on the part of the Respondents to comply with the order of the Tribunal, the Applicant will be constrained to initiate proceedings for Contempt. Copy of notice served by the Applicant is kept on record by him at page 118 to 121.

12. The Respondents have failed to reply notice of Contempt for action for Contempt.

13. In present application for action for contempt, Applicant has made three separate prayers, however only one prayer i.e. clause (c) of paragraph 26 would embrace or comprehend all other prayers. Said paragraph No.26 [c] reads as follows :-

“c] By a suitable order / direction, this Hon’ble Tribunal may be pleased to hold and declare that the Respondent Nos. 1 and 2 herein have committed contempt of this Hon’ble Tribunal in view of willful disobedience of the order of the Hon’ble Tribunal dated 30.10.2015 rendered in O.A.No.422 of 2014, and accordingly, the Respondents be appropriate punished.”

(Quoted from page 17 of the O.A. paper book.)

14. Limited questions to be examined for considering as to whether cognizance be taken, is as to whether Applicant has described / narrated as to how Respondent have committed act / omission amounting to willful act of Contempt, and as to whether material, if any, brought on record by the Applicant demonstrates, prima facie act of willful disobedience.

15. During the course of hearing, learned Advocate for the Applicant was called to isolate to the pleadings contained in the application in which he may have averred / described the facts due to which Contempt is committed by the Respondents.

16. Learned Advocate for the Applicant has indicated that the averments contained in paragraphs 15, 16 and 17, do aptly describe failure on the part of respondents which constitutes willful act of contempt.

17. Gist of allegation of the Applicant contained in the paragraphs No.15 to 17 of application is summarized as below:-

Applicant had served on Respondents the notice dated 27.06.2016 in addition to applications already submitted, the Respondents had ample opportunity and time to comply with the order passed in O.A., however, they have failed to comply and obey, the mandatory directions contained in order dated 03.10.2015 passed in O.A.No.422/2014. Thus Respondents have committed an act of willful disobedience of the order of this Tribunal, and hence committed contempt.

18. In order to ascertain the narration of facts constituting contempt it is necessary to have a look on the operative part of the order of the Tribunal passed in O.A.No.622 of 2014 dated 30.10.2015. The direction contained in the order which is finding place in paragraph 6 is excerpted and is quoted as follows :-

“.....
The Respondent No.1 is directed to convene the meeting of appropriate Establishment Board within a period of four weeks from the date of this order to consider the case of the Applicant for promotion to the post of Deputy Secretary.”

(Quoted from page 22 of the O.A. paper book.)

19. What is seen from record, is as follows :-

- (a) Order passed in O.A.No.423 of 2014, dated 12.12.2014, relating to quashing adverse remarks was carried before Hon'ble High Court and Writ Petition No.3631 of 2015 was dismissed by Hon'ble High Court on 08.07.2015.
- (b) In view that the order passed in O.A.No.423/2014 was confirmed by Hon'ble High Court and in view of order passed in O.A.No.422/2014 to consider, it was obligatory on the part of the Government to convene the meeting of Establishment Board to consider Applicant's case.

- (c) Accordingly, the meeting of Establishment Board was convened and was held on 07.11.2015.
- (d) The Establishment Board has examined eligibility and has found that the Applicant is eligible to be promoted (as per record in paragraph 4, page 99 and paragraph 6 of page 104 and 105).
- (e) The Establishment Board has communicated to G.A.D. by letter dated 21.11.2015, relevant portion is at page 103 to 105 of the paper book of O.A., to the effect that by virtue of Government decision issued by G.A.D. dated 02.04.1996 a conscious decision as to whether Shri S.B. Pawaskar be promoted has to be taken by competent authority and thereafter his name can be included in the selection list.
- (f) Thereafter, General Administration Department has examined Applicant's case and the Government took the decision that the matter of Applicant's promotion should await final order in the pending Departmental Enquiry. This fact is evident from the note and order / decisions thereon, record is available at pages 101 and 102 of the paper book of O.A..
- (g) The Government has communicated to the Applicant that the decision is taken, through letter dated 02.05.2016. (Exhibit-I, page 96 of paper book of O.A..)
- (h) Applicant applied for information and documents by submitting application on 03.05.2016, through Exhibit-J, at page 7 and all documents asked for were furnished along with letter dated 07.05.2016 (copies whereof are on record at Exhibit-J, page 98 to 108 of paper book of O.A..)

20. It is pertinent to note that through Applicant's prayers in O.A.No.422 of 2014, (quoted in foregoing paragraph no.3) the Applicant had sought mandatory direction for promotion, deemed date and consequential benefits as is evident from prayer 9(a) and 9(c). In the background of those prayers, this Tribunal had granted a direction "to convene meeting and take the decision".

The order passed by the Tribunal, on whatever is shown by the Applicant as well by Contemnors is fully and duly complied with by the Respondents.

21. It is evident that Applicant has filed present Contempt Application after receipt of letter dated 07.05.2016 and documents at page nos.99 to 108, which Applicant himself has placed on record. The Applicant had to show that alleged compliance by

the Respondents does not amount to due and total compliance to which the Applicant has utterly failed. Thus, the Applicant has utterly failed to show that operative part of the order is disregarded or disobeyed and that too willfully.

22. It is perceived from the oral submissions of learned Advocate for the Applicant that he believes that this Tribunal has ordered while allowing the O.A.No.422/2014 that "the Applicant be promoted to the post of Deputy Secretary". What we see from the submissions of the Applicant is that the Applicant desires and expects is besides exact text of the operative order. A submission pleading or argument that, a mandatory direction contained in Tribunals order is not complied rather it is willfully disobeyed, is not available either on record or could be said to be available to the Applicant.

23. It is evident that the Applicant is aspiring to be promoted to the post of Deputy Secretary, his expectations are not fulfilled. Options of the Applicant probably was to challenge the Establishment Board's decision contained in last part of paragraph 6 is seen at page 105, which read as follows :-

"श्री. पावसकार यांना पदोन्नती देण्यासंदर्भात शासन निर्णय, सामान्या प्रशासन विभाग, दिनांक २.४.१९७६ मधील तरतुदीनुसार सक्षम प्राधिका-यांच्या मान्यतेने जाणीवपूर्वक निर्णय सर्वप्रथम सन २०१२-१३ या निवडसूची वर्षासाठी घेण्यात यावा. सदर निवडसूची वर्षात त्यांना पदोन्नती न देण्याचा निर्णय झाल्यास उक्त शिफारसीनुसार त्यांना पदोन्नती देण्यासंदर्भात शासन निर्णय, सामान्या प्रशासन विभाग, दिनांक २.४.१९७६ मधील तरतुदीनुसार सक्षम प्राधिका-यांच्या मान्यतेने जाणीवपूर्वक निर्णय, यथास्थिती त्यानंतरच्या निवडसूचीवर घेण्यात यावा."

(Quoted from page 105 of O.A. paper book)

24. Instead of choosing a rightful and appropriate remedy, Applicant has elected for filing application for action for Contempt, which of course is inappropriate, rather erroneous. May be that the Applicant wants to derive some joy by calling senior officers before this Tribunal.

25. Primary object and moto of a litigant has to be to secure and safeguard his personal interest than to chase a vicious pleasure. By filing a contempt case when within the Applicant's knowledge contempt is not committed, Applicant has enjoyed vicious pleasure of dragging the Officers in the Contempt and for sure, postponed the object which he eagerly craves.

26. After considering facts, record and submissions, we have to note with grave dissatisfaction that despite knowledge of the decision of the Government on Applicant's claim, which was taken on 07.11.2015, and which was officially communicated to him by letter dated 02.05.2016, and also through documents supplied to him with letter dated 07.05.2016, the Applicant has chosen to plead that the order passed by this Tribunal is disobeyed.

27. The applicant is a very senior and seasoned Officer, and it is hard to believe that Applicant does not understand the meaning and purport of documents on record at pages 96 to 108 of the paper book.

28. By filing present application, for action for contempt the applicant has engaged himself in an exercise of 'arm twisting' which is not only unjust & unfair but is an exercise which is vexatious, and for his applicant cannot go unchastised.

29. In the result, we hold that Contempt Application has no merit and is dismissed.

30. Applicant shall suffer own cost and pay to the respondents costs of Rs.10,000/- each.

Sd/-

(Rajiv Agrawal)
Vice-Chairman

Sd/-

(A.H. Joshi, J.)
Chairman

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