



2025:DHC:4777



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

% *Reserved on: 16th May 2025*
Pronounced on: 30th May 2025

+ **CONT.CAS(C) 1274/2023, CM APPL. 53042/2023**

RITA SAXENAPetitioner

Through: Mr. Akshay Makhija, Sr. Advocate
with Mr. Pratyush Sharma,
Advocates.

versus

GVL SATYA KUMAR MANAGING DIRECTOR CRIS &
ORS.Respondents

Through: Mr. Chandan Kumar, Mr. Vikram
Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This petition has been filed alleging willful and deliberate disobedience of Judgment dated 16th May 2023, passed in ***Review Petition No. 40/2023*** in ***W.P.(C) 906/2018***.

2. The gravamen of the dispute between the parties relates to directions passed by the Court in the said Judgment, upgrading the marks given to the petitioner in her Annual Performance Appraisal Report ('**APAR**') and consequently directing that, '*the respondent shall consider the effect thereof under the rules and proceed accordingly*'.

3. Essentially, while the respondent states that they have considered the petitioners case and have conducted a review Departmental Promotion



Committee (**‘DPC’**) and have found the petitioner unfit for promotion; the petitioner’s assertion is that the said review DPC and decision arrived at, by the same, is not in accordance with the applicable rules. It is also the petitioner’s grievance, that the respondent, in rejecting her promotion, has acted *mala fide* and has deliberately attempted to deprive the petitioner of what she is duly entitled to.

4. This Judgment, therefore, seeks to determine whether the Court, in exercise of its contempt jurisdiction, is permitted to assess the legitimacy and validity of a decision taken by an authority or whether the factum of such authority have taken “a” decision, itself, amounts to obedience of the directions of this Court, and an assessment of the directions passed and effect of such compliance made, is permitted and in what circumstances.

Factual Background

5. Petitioner joined the Centre for Railway Information System (**‘CRIS’**), an organization of the Government of India under the Ministry of Railways, as a *Junior Software Programmer*, in the year 1991.

6. On 17th November 2010, the petitioner was promoted to the post of *Senior Project Engineer* (**‘SPE’**) in the grade pay of Rs. 37400-67000 + GP 8700.

7. As per *Recruitment Rules/by laws* of CRIS read with Office Order dated 4th March 2009, after having served for four years with “*excellent performance*” in APAR, the petitioner became eligible for consideration in the DPC, to the next post of *Principal Project Engineer* (**‘PPE’**), in the grade pay of Rs 37400 - 67100 + GP 8900, in the *time bound promotion scale*.



8. In the assessment year 2013-14, petitioner's APAR was downgraded from '*Outstanding*' to '*Very Good*' by the Reviewing Officer, without assigning any reason. It was alleged by the petitioner that the requisite procedure was not followed in this downgrading *inter alia* no reasons were assigned, making the conduct of the respondents and the decision taken by them, extremely ambiguous.

9. The representation for review was filed on 23rd July 2009. Petitioner was not considered in the *Promotion Order* dated 3rd July 2015, issued by CRIS.

10. On querying the respondent, she came to know that the eligibility criteria was a minimum of *19 ACR points* in the last four years, whereas the petitioner had secured *18 ACR points*.

11. Thereafter, multiple representations were submitted, including reminders followed by a legal notice. The same was responded to, by stating that there isn't any omission or any violation of any guidelines, by the respondents.

12. Accordingly, the Writ Petition with a prayer to quash order dated 13th December 2016, by declaring the downgrading of the petitioner's *APAR/ACR*, for the year 2013-14, as illegal, void and invalid.

13. In the order dated 11th April 2022, it was noted that under *part IV* relating to *General qualities of an officer*, with the attribute, '*Discipline*', and *part VI*, relating to *personality attributes* of the employees under *Amenability to discipline & conduct-adherence to accept norms and agreed systems, respect for other's time and exercise of self-control*, the *Reporting Officer* had awarded *5 marks*, each, whereas, the *Reviewing Officer* had reduced the marks, from *5 to 4* in *part IV*, i.e. *Discipline*.



14. This issue was considered by the Writ Court, in the Judgment dated 16th May 2023, and following conclusions were arrived at:

- I. The Court disagreed with the submission of the respondent that the decision to give two different marks could not have been actuated by *mala fide* and should not be interfered with and that the exercise of power, by the *Reviewing Officer*, was *bona fide* and does not call for interference.
- II. The attributes under the heading '*General*' part IV and under part VI, being *pari materia*, the downgrading of marks from 5 to 4, under part IV, is mismatched, with that under part VI, by the *Reviewing Officer*.
- III. Respondents could not throw any light, justifying the reduction in marks, under part IV.
- IV. The order dated 11th April 2022 was reviewed to the extent, that reduction of marks by the *Reviewing Authority*, in part IV, under attribute '*Discipline*', was invalid.
- V. Marks shall be treated as '5', and accordingly, the total marks shall get translated to an appropriate grading.
- VI. Respondent shall consider the effect thereof, under the rules and proceed accordingly.

15. **LPA No. 539/2023** was filed against the order dated 16th May 2023 but no *stay* was granted.

16. Respondent *vide* letter dated 7th August 2023 revised the overall marks of the petitioner from '84' to '85' and the APAR for the year 2013-14, showing as '*Outstanding*' in place of '*Very Good*'.

17. Since there was a delay in convening of the DPC, the petitioner



moved **CONT.CAS(C) 1274/2023**, before this Court.

18. By order dated 5th September 2023, the Court directed the respondent to convene the DPC within a period of 30 days and consider the effect and consequential benefits arising out of letter dated 7th August 2023, within the said period and gave liberty to the petitioner, to revive the petition, in case the order was not complied with in, “*true letter, spirit and intent*”.

19. Accordingly, **CM APPL. 53042/2023** was filed, for the revival of the petition, which was allowed by order dated 29th November 2024.

20. Subsequently, a DPC was convened and an order dated 10th October 2023 was passed, which rejected the promotion of the petitioner, on the following grounds:

- I. Petitioner has to undergo a *Special Selection Procedure*, as she has not faced the *Special Selection Committee*, during her earlier promotions.
- II. In accordance with the extant policy on promotion, the DPC considered the last five years’ APARs of the petitioner.
- III. DPC noted that petitioner does not fulfil the minimum APAR points of 23, in the last five years, as mandated by Office Order dated 69/2015.

Submissions on behalf of petitioner

21. Mr. Akshay Makhija, Senior Counsel for petitioner, canvassed the point that the decision in order of 10th October 2023, of the DPC, rejecting the promotion, was *mala fide*, in the teeth of the order dated 16th May 2023 and did not satisfy the “*true intent, letter and spirit*”, of the directions of



the Court, for *inter alia*, the following reasons:

- I. Originally, five people had been considered for promotion from SPE to PPE, by Office Order dated 3rd July 2015, which did not have the name of the petitioner.
- II. Subsequently, by order dated 2nd July 2015, the DPC considered the promotions from SPE to PPE, for employees eligible in the calendar year 2014 and the petitioner was included in the list of 8, with noted number of years, being *four*. It was mentioned in the said order that the points required for promotion from SPE to PPE were *nineteen*, if the number of years spent in the SPE grade, was *four*.
- III. In response to the RTI application, filed by the petitioner, the information supplied from the respondent was that petitioner had the prescribed service of four years and had 18 points as against the benchmark of 19, and therefore, was not recommended.
- IV. By the Judgment dated 16th May 2023 and a subsequent letter dated 7th August 2023, the overall marks of the petitioner had been revised in this regard from '18' to '19' which was an admitted situation. Considering this, therefore, the conditions prescribed in the rejection letter of 10th October 2023, would clearly not stand any ground, in that:
 - a) There was no requirement, ever, for a *Special Selection Procedure*, since, by Office Order No.69/2015, *Special Selection Procedure* was introduced for technical professionals recruited, on or after, 1st July 2014, which



was later modified to 2015, by Office Order No.341/2015, to make it applicable for promotion from calendar year 2015 and onwards.

- b) The past five years' APARs, may not be considered, in light of the fact that the petitioner satisfied the condition of having served for four years in the SPE grade and that was the basis of marking.
- c) The benchmark of minimum APAR points of 23, as prescribed, was completely unfair and illegal, considering that earlier the benchmark was stated as '19', as has been stated above.

22. Senior Counsel's submission, therefore, in essence was that in its implementation (*after having upgraded the respondent's marks pursuant to Judgment dated 16th May 2023*) the consequential benefits ought to have followed, which was stymied by the decision taken by the respondents, communicated *vide* letter dated 10th October 2023, noting that the decision of the DPC was based on certain criteria. Each of these criteria, as noted above, was neither made out from the records nor the applicable requirements, and clearly, therefore, was a *mala fide* attempt to subvert the orders of the Court and somehow deny the benefit to the petitioner. This, he stated, was contrary to the whole principle of "*complete obedience*" of orders of the Court, without any dilution and without any deflection.

Submissions on behalf of respondent

23. Mr. Chandan Kumar, counsel for respondent, did not address the



issue of the applicable *regulations, laws or procedure*, in relation to what has been submitted by Senior Counsel for petitioner. He restricted his submissions to the maintainability of this contempt, in that, the Court could not be invited to assess the *nitty-gritties* of the review DPC's decision and the ultimate rejection of the promotion request.

24. In this regard, he submitted, *firstly*, that the Judgment dated 16th May 2023, had merely directed the respondent to '*consider*', the effect of the upgrading, in accordance with the rules and then proceed accordingly; *secondly*, the aspect of '*consideration*' had been achieved by the review DPC; *thirdly*, the review DPC, as per communication dated 10th October 2023 had been conducted, in application of the rules which were extant, and *fourthly*, "*a*" decision had been arrived at, which was communicated to the petitioner.

25. He, therefore, stated that entering into the *validity or arbitrariness or legality* of the decision dated 10th October 2023, would amount to a fresh *cause of action* and could not be adjudicated, within this Contempt Petition. He relied upon the following judgments to support his case:

- i. *J.S. Parihar v. Ganpat Duggar*¹
- ii. *Ashok Paper Kamgar Union v. Dharam Godha*²

26. Essentially, on the basis of *J.S. Parihar (supra)*, he stated that once an order is passed, and the decision taken is on the basis of the directions issued by the Court, there arises a fresh "*cause of action*" to seek redressal, in an appropriate Forum.

27. Whether such decision is *right or wrong* or not in conformity with

¹ (1996) 6 SCC 291

² (2003) 11 SCC 1



directions, would give an opportunity to an aggrieved party, for judicial review but cannot be considered, as a violation of the order.

28. Moreover, he stated, that there was no outer limit which was given for consideration, by the Judgment dated 16th May 2023. Despite that, it had re-considered its decision, under a review DPC. He adverted to Section 12 of the Contempt of Courts Act, 1971, and stated that the only action, which could be taken by the Court, in this regard, is a punishment and not a review (*of the order dated 10th October 2023*).

29. To this, Senior Counsel for petitioner rejoined and stated, that even these judgments are passed upon the presumption, that if there is an order passed by the Government, ‘*on the basis of the directions issued by the Court*’, the issue of a fresh cause of action, would arise; but not otherwise when the order itself, is not on the basis of the directions passed or does not comply with the directions passed in their “*true letter, spirit and intent*”.

Analysis

30. The issue before the Court is in sharp focus. The Court is seized of a contempt proceeding alleging wilful disobedience of the judgment dated 16th May 2023 passed in ***Review Petition No. 40/2023*** in ***W.P.(C) 906/2018***. The issue concerns revision of the rating in the APAR.

31. The crux of the determination before the Review Court has been encapsulated, as under (*in the judgment dated 16th May 2023*):

“14. Having heard the learned counsel for the parties, in substance the review of order dated April 11, 2022 is being sought because of the marks awarded to the petitioner which have been noted by this Court in the impugned order more specifically under part IV relating to General qualities of an Officer with attribute



“Discipline” and part VI relating to personality attributes of the employees under the sub attribute “Amenability to Discipline & Conduct-Adherence to accept norms and agreed systems, respect for other’s time and exercise of self-control” the Reporting Officer had awarded 5 marks each whereas the Reviewing Officer has reduced the marks 5 to 4 in part IV under the heading general with sub attribute of “Discipline”.”

32. The respondent’s submission was recorded as under:

“15. On a specific query to Mr. Chandan Kumar as to how the respondent can justify under an identical attribute of “Discipline” two different marks, Mr. Chandan Kumar states that such a decision unless held to be actuated by mala fide should not be interfered with. In other words, it is the submission that the exercise of power by the Reviewing Officer, was bona fide and does not called for interference.”

33. On this basis the Court arrived at the following conclusions:

“16. I am unable to agree with the submission made by Mr. Chandan Kumar for the simple reason that the attributes under the heading General (part-IV) and under part-VI being pari materia the same, the downgrading of marks from 5 to 4 under part IV does not match the marks given to the petitioner under part VI by the Reviewing Officer. No submission could be made by the petitioner in that regard when the writ petition was decided for the reason that the record was produced for the perusal of the Court and also it is the case of the petitioner that she has never been communicated downgrading of 87 marks to 84 marks which translated to “Very Good” grading. To that extent, the petitioner is prejudiced. The relevant portion of the Part-IV and Part-VI of the chart is reproduced as under:



*Part-IV
General*

<i>Factor Description</i>	<i>Outstanding</i>	<i>Very Good</i>	<i>Good</i>	<i>Average</i>	<i>Below Average</i>
<i>Discipline</i>	5	4	3	2	1

xxx

xxx

xxx

Part VI

PERSONALITY ATTRIBUTES OF THE EMPLOYEE

<i>Factor Description</i>	<i>Ratings</i>				
<i>"Amenability to Discipline & Conduct-Adherence to accept norms and agreed systems, respect for other's time and exercise of self-control"</i>	5	4	3	2	1

”

34. The directions which were issued by the Court are as under:

“18. In that view of the matter, the order dated April 11, 2022 is reviewed to the extent the marks reduced by the reviewing authority in part IV under the attribute “Discipline” is invalid, as the same is (1) without any justifiable reasons and (2) being at variance with the marks under identical attribute. The marks shall be treated as “5” and accordingly, the total marks shall get translated to appropriate grading. The respondent shall consider the effect thereof under the rules and proceed accordingly.”

35. Effectively, the Court had directed that the marks in the APAR would be treated as “5” and the total marks shall get translated to an appropriate grading and that *“the respondent shall consider the effect thereof under the rules and proceed accordingly”*.

36. What happened thereafter is as under:

- i. Since there was delay in convening of the DPC, **CONT.CAS(C) 1274/2023** was moved. By order dated 5th September 2023, the Court noted that the Division Bench in **LPA No. 539/2023**, moved by the respondents, did not stay the judgment dated 16th May 2023.
- ii. The respondent *vide* letter dated 7th August 2023, revised the overall marks of the petitioner from “84” to “85”; the APAR for



the year 2013-14 was converted to “*Outstanding*”. The only requirement left, was the “*effect of the change of the 2013-14 APAR*”.

- iii. The respondents were directed to convene DPC within a period of thirty days and were directed “*to consider the effect and consequential benefits arising out of the Letter dated 7th August 2023 within the said period*”. Thereafter, the Court also, in order dated 5th September 2023, gave liberty to the petitioner to revive the contempt, in case the order passed, was not complied with in its “*true letter, spirit and intent*”.

37. It is on this basis, that the petitioner alleges, that the order dated 10th October 2023, passed subsequently, rejecting the promotion of the petitioner, was not in compliance in “*true letter, spirit and intent*”.

38. For this purpose, the Court must investigate whether the order passed on 10th October 2023, was a willful and deliberate disobedience of order dated 16th May 2023/ 5th September 2023 or whether the rejection of the promotion would amount to a new *cause of action*.

39. In this regard, Senior Counsel for petitioner adverts to the order dated 10th October 2023, rejecting the promotion which disqualifies the petitioner *inter alia* on three grounds; ***firstly***, petitioner having not undergone the *Special Selection Procedure* or faced the *Special Selection Committee* in earlier promotions, ***secondly***, considering the extant policy on promotion, the DPC was to consider last five year’s APARs, and ***thirdly***, the petitioner did not fulfil the minimum APAR points of 23 in the last five years, as mandated by *Officer Order No.69/2015*.

40. Senior Counsel for petitioner elaborately underwent through the



reasons as to why, these disqualifications were unfair, unreasonable, and disproportionate, and therefore, the Court in a contempt jurisdiction ought to assess them from an angle of willful disobedience.

41. For the purpose of this assessment, while the respondent has essentially relied upon the decision of the Supreme Court in *J.S. Parihar (supra)* the petitioner has relied upon a decision in *Bihar State Govt. Secondary School Teachers Assn. v. Ashok Kumar Sinha*³.

42. The Court took upon itself to examine the law, as regards the extent of scrutiny that a Contempt Court can undertake, to examine the decision taken in compliance of a Court's order. The following judgments are relevant in this regard which are in chronological order, for ease of reference:

- I. *Prithawi Nath Ram v. State of Jharkhand*⁴: The Supreme Court was dealing with a Contempt Petition alleging non-compliance with directions passed by a Single Judge of Patna High Court which had rejected the action for contempt. The Single Judge had come to hold that directions could not have been given and the challenge, by the appellant, before the Supreme Court was that the Judge had said that sitting in judgment over a decision rendered by another Single Judge, was not open in the contempt proceedings. The Court, therefore, held as under:

“5. While dealing with an application for contempt, the court is really concerned with the question whether the earlier decision which has received its finality had been

³ (2014) 7 SCC 416

⁴ (2004) 7 SCC 261



*complied with or not. It would not be permissible for a court to examine the correctness of the earlier decision which had not been assailed and to take a view different than what was taken in the earlier decision. A similar view was taken in *K.G. Derasari v. Union of India* [(2001) 10 SCC 496 : 2002 SCC (L&S) 756] . The court exercising contempt jurisdiction is primarily concerned with the question of contumacious conduct of the party who is alleged to have committed default in complying with the directions in the judgment or order. If there was no ambiguity or indefiniteness in the order, it is for the party concerned to approach the higher court if according to him the same is not legally tenable. Such a question has necessarily to be agitated before the higher court. The court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order. Though strong reliance was placed by learned counsel for the State of Bihar on a three-Judge Bench decision in *Niaz Mohd. V. State of Haryana* [(1994) 6 SCC 332] we find that the same has no application to the facts of the present case. In that case the question arose about the impossibility to obey the order. If that was the stand of the State, the least it could have done was to assail correctness of the judgment before the higher court. The State took diametrically opposite stands before this Court. One was that there was no specific direction to do anything in particular and, second was what was required to be done has been done. If what was to be done has been done, it cannot certainly be said that there was impossibility to carry out the orders. In any event, the High Court has not recorded a finding that the direction given earlier was impossible to be carried out or that the direction given has been complied with.*

.....



8. If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the court that passed the order or invoke jurisdiction of the appellate court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed. Flouting an order of the court would render the party liable for contempt. While dealing with an application for contempt the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible. In that view of the matter, the order of the High Court is set aside and the matter is remitted for fresh consideration. It shall deal with the application in its proper perspective in accordance with law afresh. We make it clear that we have not expressed any opinion regarding acceptability or otherwise of the application for initiation of contempt proceedings.”

(Emphasis Supplied)

- II. **Ram Kumar Mehta v. Ashok Kumar**⁵: A Single Judge of this Court was dealing with a Contempt Petition alleging that the respondents had failed to comply with the orders. Respondents were directed to grant ACP Benefits claimed by the petitioners and to complete all formalities within a fixed time period. The petitioner raised certain

⁵ 2009 SCC OnLine Del 615



issue with the decision which was taken and the respondent relied upon the case of *J.S. Parihar* (*supra*). The Court relied upon the decisions in, *Kartick Prodhan v. Satyendra Nath Ghosh*⁶, *Union of India v. Subedar Devassy PV*⁷ and *Abhendra Kumar Jain v. B.K. Gupta*⁸. In *Subedar Devassy* (*supra*), the Apex Court had observed that the contempt proceedings were only concerned with the question as to whether the earlier decision has been complied with or not and cannot examine the correctness of the earlier decision or traverse beyond it and take a different view or give additional directions or delete any directions since that would amount to exercising a review jurisdiction which was impermissible. If any party is concerned or aggrieved by the decision, which, in its opinion, is wrong or the implementation is not practical or feasible, they may approach the Court that passed the order or go in appeal. In this regard, the Court held as under:

“17. In the case of Union of India v. Subedar Devassy PV, (2006) 1 SCC 613, it was observed by the Apex Court that in contempt proceedings court is concerned only with question whether the earlier decision has been complied with or not. It cannot examine correctness of the earlier decision, or traverse beyond it and take a different view from what was taken therein, or give additional directions or delete any direction, that would be exercising review jurisdiction while dealing with a contempt application which is impermissible. If any party concerned is aggrieved by the earlier decision, which in its opinion is wrong or its implementation is neither practicable nor feasible, it should always either approach court that passed the earlier order, or go in appeal there against.

⁶ (2000) 2 CHN 738

⁷ (2006) 1 SCC 613

⁸ 2003 SCC OnLine Del 1181



Rightness or wrongness of the earlier order cannot be urged in contempt proceedings. While dealing with an application for contempt, the court cannot traverse beyond the order, non-compliance with which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot traverse beyond the order. It cannot test the correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.”

(Emphasis Supplied)

- III. ***Union of India v. R.L. Yadav***⁹: The Division Bench of this Court was dealing with the decision passed by the Writ Court, which, as per the petitioner, was not complied with. In the Contempt Petition, they pleaded that the Writs were allowed, holding that service rendered as *Artificer Apprentice Trainee, Sailor* and an *Officer*, had to be clubbed for purposes of computing pensionary benefits. The Single Judge held there was no justification not to grant pension in the highest rank as *Sailor* and on the basis that they had cleared the departmental examination held for Short Service Commission in the Officers rank. The Indian Navy pleaded otherwise. The Court having heard the competing claims on this basis, held as under:

“14. In our opinion the competing claims gave birth to a dispute on merits which could not have been decided and cannot be decided in contempt jurisdiction. In the decision reported as (2006) 5 SCC 399 Midnapore Peoples' Co-operative Bank Ltd. v. Chunnilal Nanda it was held that unless the dispute in the contempt proceedings is incidental to or inextricably connected with a dispute

⁹ 2014 SCC OnLine Del 1429



already adjudicated, upon resulting in an order passed non-compliance whereof was alleged to be a case of contempt, substantive disputes in contempt proceedings could not be gone into by the contempt court and the appropriate remedy would be to take resort to a substantive action. In the decision reported as (1996) 6 SCC 291 J.S. Parihar v. Ganpat Duggar it was held that once an order was passed by the Government on the basis of the directions issued by the Court there arises a fresh cause action to seek redressal before an appropriate forum and not in contempt proceedings. In the decision reported as (2002) 5 SCC 352 Jhareswar Prasad Paul v. Tarak Nath Ganguly it was observed that a Court cannot in the guise of exercising contempt jurisdiction grant substantive relief not covered by the order/judgment which is the subject of the contempt proceedings. In the decision reported as (2004) 13 SCC 610 V.M. Manohar Prasad v. N. Ratnam Raju it was held that an order cannot be passed in contempt proceedings which would be a supplemental order to the main order.

15. The underlying reasoning is apparent. A contempt proceeding is a summary proceeding to punish the contemnor for a wilful default of a direction/order/judgment passed by a Court mandating something to be done. If in compliance an order has been passed and an issue arises whether the order is legal or not, it cannot be a case of wilful defiance unless the reasoning in the order is a ruse to overcome the direction issued; for then it would be a conscious act to overreach the order passed by the Court. But where while implementing the direction issued by the Court an order is passed which in turn gives bona-fide birth to a substantive issue which is neither incidental nor inextricably connected with the main order, it cannot be said that there is any wilful breach. It is trite that substantive adjudications of a controversy on merits cannot be adjudicated by a court exercising contempt jurisdiction.”

(Emphasis Supplied)



IV. **R.K. Mishra v. Nidhi Pandey**¹⁰: Single Judge of this Court was dealing with the allegation that the respondent had not complied with the directions of the Division Bench. The Division Bench had directed to consider the application of the petitioner in accordance with law. The said application was rejected and it was alleged that it was in contravention of the directions of the Division Bench. The Court noted as under:

14. This Court is of the opinion that in the facts and circumstances of this case, the direction issued by the Division Bench of this Court vide judgment dated 11.10.2022 has been complied. The Respondent has issued the Memorandum dated 17.11.2022 and 09.12.2022 explaining the circumstances in which the request for transfer on 'spouse ground' cannot be considered by them. The Respondent has also placed reliance on the Notice dated 12.09.2022 suspending the Annual Transfer Process for the academic year 2022-23 and its consideration by the Division Bench in the subsequent judgment dated 04.11.2022 in W.P.(C) No. 15241/2022.

15. In the facts of this case, the Petitioner is now aggrieved by the Memorandum dated 17.11.2022 and 09.12.2022 issued by Respondent declining the transfer; and he is seeking to impugn the said order on merits in these proceedings.

The Court relied on **J.S. Parihar** (*supra*) and concluded as under:

17. In the present case, the directions issued by the Division Bench was limited to directing the Respondent to 'consider' the said application and the said direction has been complied with.

.....

¹⁰ 2023 SCC OnLine Del 3120



19. This Court is therefore of the opinion that the directions issued by the Division Bench of this Court vide judgment dated 11.10.2022 have been complied with by the Respondent. In this regard it would be relevant to refer to the decision of the Supreme Court in *Ram Kishan v. Tarun Bajaj & Ors.*, (2014) 16 SCC 204, wherein the Supreme Court observed that the Court has to be satisfied beyond reasonable doubt that a contempt has been committed by the Respondent. The relevant portion of the said judgment reads as under:

"11. The contempt jurisdiction conferred on to the law courts power to punish an offender for his wilful disobedience/contumacious conduct or obstruction to the majesty of law, for the reason that respect and authority commanded by the courts of law are the greatest guarantee to an ordinary citizen that his rights shall be protected and the entire democratic fabric of the society will crumble down if the respect of the judiciary is undermined. Undoubtedly, the contempt jurisdiction is a powerful weapon in the hands of the courts of law but that by itself operates as a string of caution and unless, thus, otherwise satisfied beyond reasonable doubt, it would neither be fair nor reasonable for the law courts to exercise jurisdiction under the Act. The proceedings are quasi-criminal in nature and therefore, standard of proof required in these proceedings is beyond all reasonable doubt. It Neutral Citation Number 2023:DHC:3625 would rather be hazardous to impose sentence for contempt on the authorities in exercise of the contempt jurisdiction on mere probabilities."

(Emphasis Supplied)

V. *Snehasis Giri v. Subhasis Mitra*¹¹: The Supreme Court was dealing with various contempt petitions which complained of wilful and deliberate violation of a Judgment of the Supreme

¹¹ (2023) 18 SCC 529



Court. The Court relied upon *J.S. Parihar* (*supra*) and *Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda*¹² and observed as under:

“12. Furthermore, this Court, in lawful exercise of contempt jurisdiction, cannot examine the merits of a decision, whether the State or the madrasah’s stand that any of the petitioners is entitled to the benefits of being treated as an employee, having regard to the rules and regulations concerned. In J.S. Parihar v. Ganpat Duggar [J.S. Parihar v. Ganpat Duggar, (1996) 6 SCC 291 : 1996 SCC (L&S) 1422] this Court explained the limited scope of contempt proceedings, as follows, in the facts of the case : (SCC pp. 293-94, para 6)

“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, 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

¹² (2006) 5 SCC 399



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.”

....

14. 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.

(Emphasis Supplied)

VI. ***Dinesh Sharma v. Mahender Chawla***¹³: Single Judge of this Court was dealing with a decision to upgrade the ACRs of the petitioner since they were found to have been downgraded due to alleged

¹³ 2024 SCC OnLine Del 8310



personal vendetta. After the ACRs were upgraded, the School had to convene a review DPC and reconsider the case for appointment. The petitioner submitted that a review DPC was held but the constitution of the *Selection Committee* was bad in law. Finally, the representation had been rejected. The Court held that since the review DPC had been conducted, the Judgment had been complied with and relied on **J.S. Parihar** (*supra*) and noted as under:

“12. Law in this regard is settled that a contempt court cannot adjudicate upon the correctness or merits of the decision taken by the respondents. The Supreme Court in the case of Snehasis Giri v. Subhasis Mitra, 2023 SCC OnLine SC 107, on this aspect, has held as under:

“xxx xxx xxx

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)

13. Accordingly, liberty is granted to the petitioner to seek his legal remedies, against the respondents with respect to the constitution and outcome of the Review DPC, in accordance with law.”



VII. *Union of India v. Shashank Sharma*¹⁴: A Division Bench of this Court was dealing with a challenge to a contempt filed by the respondents' seeking initiation of contempt proceedings for contumacious violation of an order passed by the Tribunal. The Court held as under:

“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 Raju², the proposition was thus stated:

¹⁴ 2024 SCC OnLine Del 8032



“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 *Jhareswar 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:*

“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.

.....

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.

(Emphasis Supplied)

43. Countering the aforesaid line of decisions, Senior Counsel for petitioner relied upon the decision in *Ashok Kumar Sinha (supra)*. Supreme Court in this decision was dealing with contempt proceedings arising out of a judgment passed by the Supreme Court. The petitioner was an Association representing teachers of *Bihar Subordinate Education Service* (**BSES**). They filed a Writ Petition before the Patna High Court claiming merger of their cadre with BSES. Writ was allowed; LPA and SLP filed against it were dismissed. Since the benefits of merger were not being granted, another Writ Petition was filed, which too, was allowed and affirmed by orders in another LPA.

44. Subsequently, SLP was again dismissed resulting in the outcome in the favour of the petitioner. In compliance with the judgment of the Court a *‘resolution’* merging the cadre of BSES was issued subsequently and BSES teachers were granted benefits of the merger. A single judge of the High Court allowed a challenge to the merger by the *BES Association*



(‘BESA’), the same was affirmed by the Division Bench and was challenged before the Supreme Court.

45. The State Government, in the meantime, withdrew the ‘*resolution*’ of merger, relying on the Single Judge’s judgment and all benefits arising pursuant to merger of cadre, were withdrawn. The Supreme Court was, therefore, assessing whether in the Contempt Petition they could embark on a scrutiny of the notification, revoking the merger. The Court assessed the decision for revocation on the basis that the new rules took away the benefit of merger and the petitioner had been denied the fruits of success obtained after three rounds of litigation.

46. The respondents relied upon the decision in *J.S. Parihar* (*supra*) and *Indian Airports Employees’ Union v. Ranjan Chatterjee*¹⁵. The petitioner’s submission was that there was ample power with the Supreme Court under Article 142 of the Constitution; to do complete justice and the whole intention of the Authorities was to tire the petitions and frustrate their efforts, which could not be countenanced.

47. The petitioner’s reliance is based upon the opinion given by the Supreme Court, for a ‘*limited scrutiny*’. The Supreme Court in this regard, observed as under:

“24. At the outset, we may observe that we are conscious of the limits within which we can undertake the scrutiny of the steps taken by the respondents, in these contempt proceedings. The Court is supposed to adopt cautionary approach which would mean that if there is a substantial compliance with the directions given in the judgment, this Court is not supposed to go into the nitty-gritty of the various measures taken by the respondents. It is also correct that only if there is wilful and contumacious

¹⁵ (1999) 2 SCC 537



disobedience of the orders, that the Court would take cognizance. Even when there are two equally consistent possibilities open to the Court, case of contempt is not made out. At the same time, it is permissible for the Court to examine as to whether the steps taken to purportedly comply with the directions of the judgment are in furtherance of its compliance or they tend to defeat the very purpose for which the directions were issued. We can certainly go into the issue as to whether the Government took certain steps in order to implement the directions of this Court and thereafter withdrew those measures and whether it amounts to non-implementation. Limited inquiry from the aforesaid perspective, into the provisions of the 2014 Rules can also be undertaken to find out as to whether those provisions amount to nullifying the effect of the very merger of BSES with BES. As all these aspects have a direct co-relation with the issue as to whether the directions are implemented or not. We are, thus, of the opinion that this Court can indulge in this limited scrutiny as to whether provisions made in the 2014 Rules frustrate the effect of the judgment and attempt is to achieve those results which were the arguments raised by the respondents at the time of hearing of Cas Nos. 8226-27 of 2012 but rejected by this Court. To put it otherwise, we can certainly examine as to whether the 2014 Rules are made to implement the judgment or these Rules in effect nullify the result of merger of the two cadres.

.....

37. Lest we may be misunderstood, we make it clear that it is the prerogative of the Government to frame service rules in one or the other manner. In case provisions contained in those Rules offend the rights of any of the employees, they have an independent right to challenge the same which can be judicially scrutinized by the courts, applying the settled principles of judicial review. However, if such an exercise is undertaken on the premise that it is done to comply with the directions contained in the judgment and the court finds that, ex facie, it is not so and on the contrary



offends the directions in the judgment, such a move cannot be countenanced.

38. It is also crystal clear and borne from the record that the whole exercise was done to go out of the way to help BES officers. In fact, Mr Rao even argued on these lines by pointing out that the promotions in BES cadres were made in two stages i.e. up to 31-12-1995 in one stage and from 1-1-1996 till now in the second stage. From 1-1-1996 no promotion was given to BES because it was need-based and since the posts were to be identified, only the additional charge was given to them. What is lost sight of, in this entire argument, is that, the merger is to take effect from 1977 and even Resolution to that effect is passed by the Cabinet. Further once that is done and the combined gradation list issued in the year 2007 was to be necessarily revived, further steps were to be taken from that stage. This Court is not suggesting that those of the petitioners who become senior to their counterparts in BES, should be given automatic promotion to second or third stages which was the apprehension expressed. These officers, as a result of merger and combined gradation list, would take their rightful place and thereafter their career progression would be permissible as per the Rules. For this purpose it was open to the Government to frame the rules and make provisions laying down eligibility conditions. However, by well-crafted technique of creating sub-cadres and treating teaching category as dying sub-cadre, almost the same result, which was the position before the merger, is achieved. It is obvious that such provisions in the 2014 Rules are made with the sole intention to frustrate the effect of the judgment. We have no hesitation to say that this would amount to contempt of the court.”

(Emphasis Supplied)

48. The dominant opinion in the decisions of Supreme Court and this Court, is clearly against the petitioner. The only ground to hold for the petitioner is based on the decision in *Ashok Kumar Sinha* (*supra*).



Though it is important to note that even in the said decision, the Supreme Court not only stated that they were conscious of the limits within which scrutiny can be undertaken, but also that, “*it is also correct that only if there is wilful and contumacious disobedience of the orders that the Court would take cognizance. Even when there are two equally consistent possibilities open with the Court, case of contempt is not made out*”.

49. In the facts of that case, the issuance of the 2014 Rules effectively nullified the very effect of the merger of BSES with BES, which was pursuant to the directions which had been passed, in the earlier round of litigation. The Supreme Court, therefore, felt that the 2014 Rules were frustrating the effect of the judgment.

50. In this case, even if this Court adventures into a ‘*limited scrutiny*’ of the decision taken on 10th October 2023, by the respondents, in rejecting the promotion on the basis of the review DPC, it still would involve assessment of the issues, basis which, the disqualification has been made i.e. the application of *Special Selection Procedure*, last five years’ APARs and the minimum APAR points in 2023. Said inquiry is beyond the issues which were agitated and formed part of the assessment in the original decision in ***W.P.(C) 906/2018***, as also, the decision in ***Review Petition No. 40/2023***, thereafter.

51. For the sake of clarity, the prayers in the original Writ Petition are as under:

In view of the aforesaid facts and circumstances the Hon'ble Court may therefore, graciously be pleased to:-
a) *Issue a writ, order or directions in nature of mandamus or CERTIORARI or like nature to quash the impugned order No. CRIS/ACR/Review/ 2014-15 of dated 13/12/2016 by declaring the downgrading of the*



ACR/APAR of the year 2013-14 as illegal, void and invalid being without authority and its consequential benefits.

b) To pass any other/further order/ direction as this Hon'ble Court may deem fit and proper in the light of facts and circumstances explained above, in favour of the Petitioner and against respondents, in the interest of justice."

52. The Writ Court by order dated 11th April 2022 had assessed the whole issue as regards marks in the APAR and arrived at the following conclusion:

"18. I do not see any illegality in the action of the Reviewing Officer. The Reviewing Officer had earlier changed the grading and not the rating marks. By reviewing/changing rating marks, the Reviewing Officer has removed the anomaly, and brought the marks in conformity with the grading of „very good“. Further, the Accepting Authority has accepted the grading as „very good“. It shall mean that the grading in APAR for the year 2013-14 is „very good“. Hence, the decision cannot be contested."

53. Thus, the petition was dismissed; said dismissal, however, was later reversed in the review. In both the Writ Petition and the Review Petition, the assessment being made by the Court was in relation to the *grading/rating* in the APAR. None of these issues, basis which, the review DPC rejected the promotion of the petitioner, was in question before the Court.

54. To assess whether these disqualifications were merited or not would involve a journey into issues which were not raised before the Writ Court or the Review Court, and therefore, would amount to passing a



substantive order, which is not within the ambit of a Contempt Court's jurisdiction.

55. The decisions, as noted above, emanating from *J.S. Parihar* (*supra*) are consistent in their approach. The Contempt Courts have always kept their hands away from any interpretative exercise, save and accept, to juxtapose the order passed with the compliance claimed.

56. The merits of the decision are not a matter for a Contempt Court to review. The only exception, as carved out in *Ashok Kumar Sinha* (*supra*) is that the decision taken, is completely in contravention of the directions passed; frustrating the entire import of those directions.

57. The Court, therefore, is invited to look very closely at the directions which were passed. In this case, the direction was that, "*the respondent shall consider the effect thereof under the rules and proceed accordingly*". With the APAR having been upgraded and the respondent having convened a DPC (*though post a direction by the Court on 5th September 2003*), it was for the DPC to consider the effect of the upgraded APAR.

58. It cannot be anybody's case that the Review Court had directed that based on the upgraded APAR, the petitioner ought to get promotion. If that were the case, directions as regards the same would have been passed.

59. No doubt, it would have been the desire of petitioner to achieve the promotion, pursuant to the upgradation of the APAR, and it may be so that she did not envisage that she would face further roadblocks and qualifiers in this regard. However, that relief would have to be sought before the appropriate Writ Court, either by means of a clarification or by means of using the decision taken by the latest DPC, as a fresh cause of action.



60. Taking a view otherwise, in favour of the petitioner, would result in opening the floodgates for contempt petitioners to involve the Contempt Court in assessing the merits of the decision taken. It is to be noted that the Court is not oblivious of the fact that many decisions are taken, purportedly '*complying*' with the directions of Court, yet, end up frustrating the purpose for which the petitioner had originally agitated the matter.

61. Even applying the Supreme Court's slim gateway of '*limited scrutiny*' in *Ashok Kumar Sinha (supra)*, the petitioner's submissions do not pass muster, as noted above. What is being asserted by the petitioners, in challenging the order dated 10th October 2023, denying the promotion to the petitioner, involves more than a '*limited scrutiny*'; going beyond the realm of what had been agitated before the Writ Court.

62. Accordingly, the petition is dismissed.

63. The petitioner may have a legitimate grievance that while rejecting the petitioner's case for promotion, new issues have been raised by the DPC, basis which, the promotion has been rejected. However, this would form a new cause of action and the petitioner is at liberty to approach the Writ Court in this regard.

64. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

MAY 30, 2025 /ak/kp