

(2016) 04 GAU CK 0022

GAUHATI HIGH COURT

Case No: Cont. App. (C) No. 01 and 02 of 2009.

Lt. General Arun Kumar Nanda
and Another - Appellants @HASH
Sheo Balak Singh

APPELLANT

Vs

RESPONDENT

Date of Decision: April 19, 2016

Acts Referred:

- Contempt of Courts Act, 1971 - Section 19, Section 2(b)

Citation: (2016) 4 GauLT 1177

Hon'ble Judges: Ajit Singh, CJ. and Suman Shyam, J.

Bench: Division Bench

Advocate: Mr. K.N. Choudhury, Sr. Advocate and Mr. R. Sharma, Advocate, for the Appellants; Mr. D.K. Misra, Sr. Advocate and Mr. K. Goswami, Advocates, for the Respondents

Final Decision: Allowed

Judgement

Suman Shyam, J.(Oral) - These two appeals have been preferred by the appellants/contemnors under Section 19 of the Contempt of Court Act, 1971 being aggrieved by the common judgment and order dated 30.01.2009 passed in Contempt Case No. 290/2007 whereby the appellants have been held guilty of having committed contempt of this Court by their conduct of wilful and deliberate disobedience of the common judgment and order dated 13.2.07 passed in W.P.(C) No. 4987/2006 and W.P. (C) No. 4994/2006. Consequently, the appellants/contemnors were directed to be detained in civil prison for 15 (fifteen) days with a further direction to pay a fine of Rs. 2,000/- each within a period of 02 (two) weeks from the date of the order.

2. The brief factual background of the case, shorn of un-necessary details, is that the respondent/contempt petitioner, who was serving in the rank of Superintending

Engineer (Civil) in the General Reserve Engineering Force (GREF in short) under the Border Road Development Board (BRDB in short), had earlier approached this Court by filing writ petitions being W.P.(C) No. 4989/2006 and W.P.(C) No. 4994/2006 assailing the legality and validity of the order dated 12.05.2006 issued by the Deputy Director General (Personnel), Border Roads by means of which it was clarified that equality of post of Superintending Engineers of the GREF and Colonel of the Army in the GREF is for the purpose of Army Act only and not for any other purpose including protocol. The basic grievance of the respondent/writ petitioner was that the post of Superintending Engineer in the GREF was earlier notified to be equivalent to Colonel of Army as per Gazette Notification dated 04.11.1987 and accordingly by the notifications dated 03.01.2005 and 06.01.2005 the functional scale of pay of Superintending Engineers were also made equivalent to the Colonel of the Army. However, by the impugned notification dated 12.05.2006 the earlier proclamation of equivalent status of both these posts for all purposes had been sought to be withdrawn by the authorities in an illegal and arbitrary manner to the detriment of the interest of the writ petitioner.

3. On receipt of notice in connection with W.P.(C) No. 4989/2006 and W.P.(C) No. 4994/2006 the respondents had appeared and filed counter affidavit. In paragraphs 9 and 10 of the affidavit dated 08.02.2007 filed by the Secretary, Border Development Board, Ministry of Defence on behalf of the respondent Nos. 1, 2 and 4, it had been inter-alia stated that taking note of the grievances of the Superintending Engineers (Civil) of BRES the Government, in consultations with the DOPT, is issuing another Notification clearly laying down equivalent ranks in the GREF and the Army for the purposes of the Army Act, 1950, as applied to GREF as mentioned in Annexure- IX and as such, the circular dated 12.05.2006 be treated as null and void if the same was found to be in conflict with the Govt. Notification dated 7.9.05 (draft notification). In the said affidavit it was further mentioned that the Government has accepted the prayer of the petitioner and is issuing necessary Notification to that effect equating the functional scale of the Superintending Engineers bringing it at par with the Colonels in Army and that status quo has been restored as per Notification dated 6.1.2005.

4. Taking note of the stand of the respondent as reflected in paragraphs 9 and 10 of the affidavit, the learned Single Judge was of the view that no live issue survived for adjudication and had accordingly, closed both the writ petitions by the order dated 13.02.2007 by observing as follows :-

"A consideration of the aforesaid two paragraphs of the affidavit dated 8.2.2007 along with the draft notification (Annexure-IX) which is proposed to be notified in the official Gazette makes it abundantly clear that there is no live issue for adjudication in the instant writ petitions and that the Govt, of India has now taken a decision that Superintending Engineers (Functional Scale) in the GREF will be equivalent to regular Colonels for all practical purposes and not only for the

purpose of the Army Act. The Court, therefore, is inclined to take the view that both the writ petitions may be appropriately closed on the aforesaid basis."

5. It appears that pursuant to the order dated 13.02.2007 the respondent had been posted as SO-1 (Planning) by the order dated 04.04.2007 with effect from 30.03.2007. Asserting that the post of SO-1 (Planning) was subordinate to that of Colonel in the Army, the respondent had approached this court by filing Contempt Case No. 290/2007 alleging that the appellants/contemnors had not taken proper steps for implementation of the order dated 13.02.2007 and had rather acted in wilful violation of the direction passed in the order dated 13.02.2007 by transferring him to a post which is lower than the post of Colonel in the organisational hierarchy.

6. It further appears that earlier a Gazette Notification was issued on 12.02.2007 proclaiming that Superintending Engineer (Functional Scale) of GREF shall be equivalent to Colonel in Army. Based on such Gazette Notification, the Director (W&A) had issued a notifications dated 06.08.2007 recommending the DGBR to issue orders for posting the respondent/writ petitioner as Director (Wks)/(Planning) etc. The said Notification was followed by another Notification dated 30.08.2007 issued by the office of the Chief Engineer laying down the parameters of the duties and responsibilities of the respondent as Director (Planning). Thereafter, a compliance affidavit was also filed before this court on 29.08.2007 in Contempt Case No 290/2007 placing the said facts on record. Notwithstanding the same, the learned Single Judge had disposed of the Contempt Case No. 290/2007 by the judgment and order dated 30.01.2009 holding the appellants guilty of having committed deliberate and wilful violation of the order passed by this Court, thereby committing them civil imprisonment for 15 days besides imposing the fine of Rs 2000/- each.

7. We have heard Mr. K.N. Choudhury, learned Sr. counsel appearing for the appellant in Contempt Appeal No 1/2009 as well as Mr. Randip Sharma learned Counsel appearing for the appellants in the Contempt Appeal No. 2 of 2009. Also heard Mr. D.K. Misra, learned Sr. counsel representing the respondent in both the appeals.

8. By referring to the notifications dated 06.08.2007 as well as 30.08.2007, Mr. Choudhury, submits that the order of this Court had been duly complied with by the appellants by posting the respondent/writ petitioner as Director (Planning) which is a post equivalent to the rank of Colonel in the Army. As such, the basic grievance of the writ petitioner/respondent stood redressed on account of implementation of the order dated 13.02.2007 passed by this Court. Since the implementation of the order dated 13.02.07 called for interpretation of several notifications holding the field at the relevant point of time, hence, the confusion in the matter leading to a little delay in issuing the necessary orders by the departmental authorities could not have been construed by the learned Single Judge as an act of wilful disobedience of the order of this court by the present appellant. Mr. Choudhury, therefore, submits that in view of the notifications dated 6.8.2007 and 30.08.07 there was no justification for

the learned single Judge to initiate proceedings against the appellants for contempt of court. In support of his aforesaid argument Mr. Choudhury has relied upon a decision of the Apex Court in the case of **Indian Airports Employees' Union v. Ranjan Chatterjee & Anr. reported in (1999) 2 SCC 537.**

9. It is trite that the purpose of contempt jurisdiction is to uphold the majesty and dignity of the court of law" and to keep the stream of justice clean. Power to punish under contempt jurisdiction is required to be invoked only when there is a wilful violation of the direction issued by the Court. It is not in dispute that the post of Director (Planning) is equivalent to the rank of a full Colonel in the Army. As noted above, the appellants had issued the notifications dated 06.08.2007 and 30.08.2007 in compliance of the order dated 13.02.2007 passed by this court. On a perusal of the notifications, we are satisfied that the representation made on behalf of the appellants in the affidavit dated 08.02.2007 leading to the issuance of the order dated 13.02.2007 had been duly honoured by the appellants.

10. It would be relevant to note that there was no specific direction contained in the order dated 13.02.2007 which was required to be complied with by the appellants. Once, the respondent was posted in a post equivalent to the rank of a Colonel the order dated 13.02.2007 stood substantially complied with. We, therefore, do not see any contempt on the part of the appellants in the facts and circumstances of the case. Although Mr. Misra has tried to canvas before us that notwithstanding the issuance of the aforesaid notifications, the order dated 13.02.2007 was observed in its breach rather than in compliance, the learned Sr. counsel has failed to substantiate the said argument based on the materials on record. Even after the issuance of the notifications dated 06.08.2007 and 30.08.2007 if there was any fresh issue arising between the parties, the same could have been adjudicated in an appropriate proceeding but not in a contempt petition.

11. In view of the discussion and reasons recorded above, we are of the unhesitant opinion that the learned Single Judge was not correct in passing the order dated 30.01.2009 holding the appellants guilty of committing contempt of this court and thereafter imposing the penal sentences.

12. In the result these appeals must succeed and are hereby allowed. The order dated 30.01.2009 stands set aside.

13. No order as to cost.