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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH, PATNA.

Contempt Application No. C.A. 122/2011

(Arising out O.A. No. 514/2002)

1. Akaswani & Doordarshan Diploma Engineer Association through its president namely Brij Kishore Roy, s/o Langtu Roy, s/o CB-19, Biswas Apartment, Christian Colony, Keshwa Lal Road, Lodipur, Patna. Posted as Sr. Engg. Asstt. at AIR (CBS), Patna.
2. Hardeep Kumar Mishra S/O Adya Saran Mishra Resident of DDK Patna. P.O. - G.P.O, P.S - Kotwali, Dist- Patna. Posted as Sr. Engg. Asstt. at DDK, Patna.
3. Manoranjan Kumar, son of Rangu Lal, workin as AE, DDMC, Gaya
4. Nagina Singh, son of Rangu Lal, working as Assistant Engineer, HPT Kingway Compound, AIR, New Delhi.
5. Manju Kumari Sahay, D/O Late H.N. Sahay, working as Assistant Engineer, AIR, Patna.
6. Sudhanshu Kumar, S/O Late Kaleshwar Prasad, Resident of Mohalla- Anishabad, P.S- Gardanibaghi, Dist- Patna. Posted as Sr. Engg. Asstt. at AIR (CBS), Patna.
7. Binod Kumar, son of Laxmi Prasad Sah, working as Sr. EA, AIR, Patna.
8. Redhaka Raman Prasad Singh, son of Sarju Prasad Singh, working as Sr. EA, Ranchi.

9. Prabhati Sinha, Wife of Ram Narayan Sinha, R/o Longertoli, P.S. & P.O.- Pirbhore,

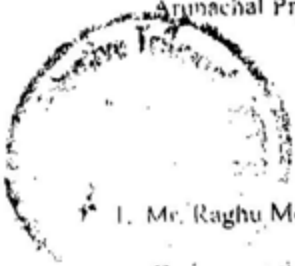
District.- Patna

10. Shyamal Naskar, son of P. Naskar, working as Assistant Engineer, DDK, Kolkatta.

11. Om Prakash Ram, son of Tuntun Ram, Working as Sr. EA, AIR, Patna.

12. Chuni Lal Sharma, son of Late Gyan Chandra Sharma, AE, DDK, Itanagar,

Assamachal Pradesh.



----- Applicants

Versus

1. Mr. Raghu Menon

Secretary, Ministry of information & Broadcasting, Shastri Bhawan, New Delhi.

2. Mrs. Alka Sirohi

Secretary, Department of Personnel and Training, North Block, New Delhi.

3. Rajiv Takru

Chief Executive Officer, Prasar Bharti, Broadcasting Corporation of India, Doodhgharshan,
Mandi House, New Delhi.

4. Noreen Naqvi

The Director General, AIR, AIR Bhawan, Sansad Marg, New Delhi.

----- Respondent.

CCPA 22 of 2011
[Arising out of OA 514 of 2002]

Thur/08.12.2011

Shri S.K.Bariar, counsel for the petitioners.

Shri A.R.Pandey, counsel for the respondents.

This contempt petition has been filed on behalf of the petitioners of OA 514 of 2002 for initiating contempt proceedings against the respondents no. 1 to 4 for deliberately and willfully violating the court's order dated 07.09.2009, passed in OA 514 of 2002.

2. The brief facts of the case are that the petitioners, who were working as Engineer Assistant, Sr. Engineering Assistant and Assistant Engineers in the Prasar Bharti, Patna, and were placed in the pay scale of Rs.6500-10500/- after the implementation of the 5th Pay Commission in 1996, had preferred OA 514 of 2002 seeking relief for grant of ACP after completion of 12 years in the next higher pay scale. The said OA was disposed of on 07.09.2009 by Division Bench comprising Hon'ble Mr. Justice Anwar Ahmad, Member [Judl.] & Hon'ble Mr. Amit Kushari, Member [Admn.]. In their order the Bench referred DOPT OM No. 35034/1/97-Estt[D], dated 10.02.2000 by which letter the DOPT has given clarification of certain points with regard to grant of ACP. It appears that after noting down the points of the said OM of DOPT and after hearing both the sides, the Tribunal held that the petitioners are entitled for grant of ACP and that the promotion should be granted in the pay scale of Rs.8000-13500/-, i.e., of Asstt. Executive Engineer, and in the concluding paragraph the Tribunal held that the OA is allowed and the respondents are directed to grant petitioners the pay scale of Rs.8000-13500/- as and when they have completed 12 years service in the pay scale of Rs.6500-10500/- and directed the respondents to issue orders regarding ACP to the petitioners within a period of two months from the date of receipt of a copy of that judgment.



After disposal of the above mentioned OA, the respondents of the said OA preferred CWJC No. 6451 of 2010 before the Hon'ble Patna High Court which was disposed of by order dated 25.08.2010. The said order has been annexed as Annexure-P/2 to the contempt petition.

3. From perusal of the order of the Hon'ble High Court it appears

that the Hon'ble High Court had been pleased to uphold the view of the Tribunal with regard to the clarification contained in the DOPT letter dated 0.02.2000 and further observed that the clarification given in the said letter of DOPT is clear and not in dispute which provides that an employee who got promotion from lower pay scale to higher pay scale as a result of promotion before merger of pay scale shall be entitled for upgradation under ACPS ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade. Thus, the order of the High Court shows that the Hon'ble High Court has been pleased to put seal upon the view taken by the Tribunal that as per DOPT letter dated 10.02.2000 the employee who got promotion from lower pay scale to higher pay scale as a result of promotion before merger of pay scale shall be entitled for upgradation under ACP ignoring such promotion. It appears that against the order of the Hon'ble High Court, the respondents of the OA [contemners] went before the Hon'ble Apex Court by way of filing SLP which was also dismissed. Thus, it appears that the finding of the Tribunal that the ACP should be granted to the petitioners as per the instructions contained in DOPT letter no. 35034 dated 10.02.2000, has attained finality and now the respondents have no alternative except to implement the instructions of the DOPT with regard to implementation of the ACP Scheme in respect of the petitioners.

5. It is true that the Hon'ble High Court in its order had given liberty to the respondents to sort out individual cases in granting ACP Scheme but it never meant that the respondents were given liberty to deviate from the instructions of the DOPT contained in the above mentioned letter. The contention of the learned counsel for the petitioners is that the respondents have failed to comply the order of this Tribunal as well as the order of the Hon'ble High Court and the show cause submitted on behalf of the contemners does not bear the signature of any contemners, and so in the eye of law it will never be deemed to be show cause submitted by the authorised person. He submitted that the respondents have annexed the order dated 04.11.2011 with regard to implementation of the order dated 07.09.2009 passed by CAT, Patna Bench in OA 514 of 2002 but the said order is not in consonance with the order passed by the Tribunal on 07.09.2009 and affirmed by the Hon'ble High

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Court and, therefore, a clear case of contempt of courts is made out against the respondents. He further submitted that the said order which has been annexed along with the show cause has been issued under signature of Under Secretary, BA[E], who is neither the respondent in the OA, nor he figures as contemner in the contempt petition and so, the said order is non-existent in the eye of law. The learned counsel submitted that under the above circumstances it is desirable that at least respondent [contemner] no.3 should be asked to appear personally before this Court for alleged contempt of court's order.

6. Shri A.R.Pandey, learned counsel for the respondents/contemnors submitted that as per the order of the Hon'ble High Court the respondents were directed to consider granting the benefit of ACP to the applicants within a period of three months in accordance with law and the observation made in the order of the Hon'ble High Court as well as in the order of the Tribunal and, accordingly, the respondents have complied the order by passing order dated 04.11.2011 and so, no contempt of court's order is made out with regard to his submission of the petitioners' counsel that the show cause has not been signed by any of the contemnors, the learned counsel for the respondents conceded this fact. He also referred the judgment of Hon'ble Apex Court in the case of R.S.Singh Vs. U.P.Malaria. Nirikshak Sangh & Ors [2011 AIR SCW 1840] in support of his contention that in exceptional cases the higher Govt. officials should be summoned.



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7. We have perused the order dated 04.11.2011 issued under the signature of Under Secretary, BA[E] from perusal of which we are satisfied that this order has not been issued by competent authority and the same is not in consonance with the order of the Tribunal dated 07.09.2009, passed in OA 514 of 2002 as well as the order of the Hon'ble Patna High Court dated 25.08.2010, passed in CWJC No.6451 of 2010. We are also of the view that order is also not in consonance with the instructions contained in DOPT letter no. 35034, dated 10.02.2000 and, therefore, we are constrained to observe that the order has been passed in violation of the Court's order. In such circumstances, we have no alternative except to ask the respondent no.3 [Rajiv Takru, Chief Executive Officer, Prasar Bharti, Broadcasting Corporation of India, Dardarshan, Mandi House, New Delhi] to appear personally before the Court and explain as to why charges for contempt of court's order should not

be framed against him.

8. List this case on 06.01.2012 for hearing.



A.K. Jain
[A.K.Jain]/M[A]

S.M.M. Alam
[S.M.M.Alam]/M[I]

"True Copy"

Declaration that this is a true and correct copy of the document/order as in the case No. 1000/2011 appearing therein have been signed and submitted with no modifications.

[Signature]
9/1/11
Section Officer (J)
Central Administrative Tribunal
Patna Bench, Patna