

IN THE HON'BLE SUPREME COURT OF INDIA
(INHERENT JURISDICTION)

CONTEMPT PETITION (CIVIL) NO. OF 2019
IN

WRIT PETITION CIVIL NO. 521 OF 2008

(ARISING OUT OF IMPUGNED JUDGMENT AND ORDER
30.06.2016 PASSED BY THIS HON'BLE COURT IN WRIT PETITION
(CIVIL) NO.521 OF 2008)

IN THE MATTER OF:

1. Naveen Singh Negi

2. Prashant Guha

3. Rohan Arora

....Petitioners

Versus

1. Shri Ajay Bhushan Prasad Pandey
Revenue Secretary,
Department of Revenue,
Ministry of Finance,
Government of India,
North Block, New Delhi -110001

2. Shri Pranab Kumar Das
The Chairman,
Central Board of Indirect Taxes & Customs,
Department of Revenue, Ministry of Finance,
Government of India, North Block,
New Delhi-110001

3. Shri Ashok Kumar Mehta

The Chief Commissioner (Cadre Controlling Unit)
Type-VI – 401, 'Kautilya'
Central Revenue Colony,
Race Couse Road,
Vadodara(Gujarat)-390007...Respondents/

Alleged Contemnors

IN WRIT PETITION (C) NO. 521 OF 2008

1. Rajeev Kumar Gupta

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2. Rajiv Gupta
3. Dashrath Singh Kushwaha
4. Davinder Singh Rana

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5. Hans Kumar Singh
6. Sanjeev Kumar Jindal
7. Shyam Singh
8. G. Seshagiri Rao

....Petitioners

VERSUS

1. Union of India
Ministry of Personnel,
Through its Secretary
Public Grievances and Pensions Secretary
Lok Nayak Bhawan, New Delhi
2. Department of Personnel and Training,
Through its Secretary
North Block, New Delhi
3. Ministry of Social Justice and Empowerment
Through its Secretary
North Block, New Delhi
4. Ministry of Information and Broadcasting
Through its Secretary
North Block, New Delhi
5. Chief Executive Officer
Prasar Bharti: Broadcasting Corporation of India,
PTI Building, Sansad Marg,
New Delhi
6. Director General, Doordarshan
Doordarshan Bhawan, Copernicus Marg,
New Delhi
7. Chief Engineer (Civil) (I)
Civil Construction Wing, All India Radio,
5th Floor, Soochna Bhawan, CGO Complex,
Lodhi Road, New Delhi
8. Director General,
All India Radio,
Akashvani Bhawan, Sansad Marg,
New Delhi

...Respondents

**CONTEMPT PETITION UNDER SECTION 14 OF CONTEMP OF
COURTS ACT, 1971 AGAINST THE IMPUGNED JUDGMENT
AND ORDER DATED 30.06.2016 PASSED BY THIS HON'BLE
COURT IN WRIT PETITION (CIVIL) NO.521 OF 2008**

TO

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS OTHER COMPANION JUDGES OF
THIS HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE

APPLICANTS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:-

1. That this Hon'ble Court have directed the respondents vide its order and judgment dated 30.06.2016 to provide Reservation in Promotion to the Persons with Disabilities (hereinafter referred as "PWD") in all identified posts in Group A and Group B under the Union of India in Writ Petition (Civil) No. 521 of 2008 with Civil Appeal No. 5389 of 2016 in the light of "The Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as "Act"), wherein inter-alia this Hon'ble Court have been pleased to observe as follows:

"25. In light of the preceding analysis, we declare the impugned memoranda as illegal and inconsistent with the 1995 Act. We further direct the Government to extend three percent reservation to PWD in all IDENTIFIED POSTS in Group A and Group B, irrespective of the mode of filling up of such posts. This writ petition is accordingly allowed."

A true copy of the judgment and order dated 30.06.2016 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No. 521 of 2008 with Civil Appeal No. 5389 of 2016 is annexed herewith as **ANNEXURE C-1** at (Pages 18 to 31).

2. That further vide judgment and order dated 06.12.2017 passed in Contempt Petition (Civil) No. 856 of 2017 in C.A. No. 9096 of 2013, this Hon'ble Court has been pleased to held as follows: -

"It appear to us from the materials on record that there is subsequent judgment of this Court in "Rajeev Kumar Gupta and others Vs. Union of India and others" wherein the view has been taken that the

quota provided under the 1955 Act for disabled persons has to be provided regardless of whether the same is filled up by way of direct recruitment or promotion. In a way we will understand the decision of this Court in Rajeev Kumar Gupta (supra) to be carrying forward the law expounded by this Court in the initial judgment dated 8th October, 2013 passed in Civil Appeal No. 9096 of 2013.

From the materials on record we will find that the decision in Rajeev Kumar Gupta (supra) has been referred to a larger Bench in order to decide the question as to whether the reservation as an exception to Article 16 of the Constitution of India can be provided to disabled persons, apart from Scheduled Castes and Scheduled Tribes candidate for whom a specific provision has been made in the Constitution of India by way of an amendment thereof.

In the above circumstances, the issue with regard to commission of contempt insofar as the order of this Court dated 8th October, 2013 passed in Civil Appeal No. 9096 of 2013 is concerned is being kept in abeyance until a full consideration thereof. However, in view of the later pronouncement of this Court in Rajeev Kumar Gupta (supra) which, according to us, would hold the field until the issue referred is decided by a larger Bench."

A true copies of orders dated 06.12.2017 & 31.01.2018 passed by the Hon`ble Supreme Court in Contempt Petition (Civil) No. 856 of 2017 in C.A. No. 9096 of 2013 is annexed herewith as **ANNEXURE C-2** at (Pages 32 to 37).

3. That it is respectfully submitted that Petitioners 1, 2 & 3 were recruited as Inspector in Central Excise & Customs (Now Central GST & Central Excise) under PWD (Person with Disability) category through Combined Graduate Level Examinations conducted by Staff Selection Commission, New Delhi. The Petitioners 1, 2 & 3 are working as Inspectors of Central GST & Central Excise, Vadodara Zone since 06.05.2014, 30.05.2014 & 17.02.2011 respectively

after their respective recruitment. Presently, the Petitioners 1, 2 & 3 are posted as Intelligence officers (in the grade of Inspector of Central GST & Central Excise), in the office of Additional Director General, Directorate General of GST Intelligence, Surat Zonal Unit, Surat.

4. That the Respondent No.3 is the Cadre Controlling authority of Inspectors of Central GST & Central Excise in the combined Cadre of Gujarat state, which includes Vadodara Zone & Ahmedabad Zone. All the promotions from the grade of Inspectors of Central GST & Central Excise to the grade of Superintendent of Central GST & Central Excise are done by the Respondent No.3.
5. That it is to submit that Petitioners right for promotion is also guaranteed by an Act of the Parliament under "Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (hereinafter referred as "Act"). As per the provisions section 32 of the Act, an Expert Committee was constituted by the Ministry of Social Justice and Empowerment, Government of India, on the 30th December, 2010 under the Chairmanship of Additional Secretary, Ministry of Social Justice and Empowerment.

The Expert Committee, with the help of three sub-committees, made an in-depth study of various jobs performed in Government of India Ministries/Departments, public sector undertakings and autonomous bodies including Universities. The Sub-committees also reviewed jobs

notified in 2007 and prepared a detailed list of Groups A, B, C and D posts which were identified suitable for PWD. The Expert Committee submitted its report on 24th January, 2012. The Central Government accepted the report and the list of posts identified for PWD has been published vide Notification No. 16-15/2010-DD-III dated 29th July, 2013 (hereinafter referred as "*Notification*") by Ministry of Social Justice & Empowerment, Government of India. The Central Government also notified the gist of the Report which is at ANNEXURE – B of the said Notification which is herein below reproduced for kind perusal of this Hon`ble Court:-

"GIST OF THE REPORT OF THE EXPERT COMMITTEE TO IDENTIFY OR REVIEW THE POSTS IN GROUP A, B, C AND D TO BE RESERVED FOR THE PERSONS WITH DISABILITIES IN ITS MINISTRIES OR DEPARTMENTS AND PUBLIC SECTOR UNDERTAKINGS.

- 1. The Expert Committee after detailed discussion on the list of posts identified or reviewed by the three sub-committee and considering the responses from different stakeholders, recommend a detailed list of Group A, B, C and D posts to be reserved for persons with disabilities.*
- 2. The Committee also recommend as follows: -*
 - (i). Great caution should be exercised while excluding a post from the list of posts already if identified.*
 - (ii). If a post is already held by a person with disability, it should be deemed to have been identified.*
 - (iii) If a post is identified in the feeder grade, the posts in the promotional grade should also stand identified.*
 - (iv) Keeping in view the principles of reasonable accommodation, Government Departments should ensure accessible environment including providing suitable or appropriate hardware and software as well as required assistive devices to the persons with disabilities to enable them to perform their assigned duties.*

3. *The list of posts identified by the Expert Committee is only indicative and not exhaustive. If a post has duties and responsibilities similar to an identified post, that post should be construed to be identified. The Departments and the Public Sector Undertaking are free to identify more posts in their organizations, over and above this."*

That Note 2-4 of the para 5 of the aforesaid Notification further supplements as follows: -

"Note 2: The list of posts being notified is not an exhaustive list. The Ministries, Departments, Public Sector Undertakings and the autonomous bodies may further supplement the list.

Note 3: If a post is already held by a person with disability, it shall be deemed to have been identified.

Note 4: If a post is identified in the feeder grade, the post in the promotional grade should also stand identified."

6. That the Inspector post in Central Excise & Customs is an identified post for PWD as per letter F. No. C.18013/08/2008-AD.III(B) dated 01.07.2010 issued by the Respondent No. 2.
7. That an Inspector in Central GST & Central Excise, which is a Group-B (Non-Gazetted) post, is promoted to the next post and grade of Superintendent of Central GST & Central Excise which is a Group-B (Gazetted) post.
8. That in the information provided by Shri Vishnu Kumar, First Appellate Authority under RTI Act/ Joint Director, DGHRD(HRM), Central Board of Indirect Taxes & Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi, vide Order-in-Appeal No.

07/DGHRD(HRM)/2019/RTI dated 25.04.2019 to Petitioner No. 3 reveals that *"The post of Superintendent of Central GST & Central Excise is not a Direct Recruitment Post. This is 100% promotion post from the feeder cadre of Inspector on Central GST & Central Excise. The direct recruitment is made at feeder cadre level for the post of Inspector on Central GST & Central Excise."*

A true Copy of the Order in RTI Appeal No. 07/DGHRD(HRM)/2019/RTI dated 25.04.2019 of Petitioner No. 3 is annexed herewith as **ANNEXUREC-3** from (Pages 38 to 42).

9. That the Contemnors have appointed a similarly placed person and this fact has been disclosed vide reply dated 10.06.2019 under Right to Information Act. The Contemnors/Respondents has admitted to promote a similarly placed candidate under the PWD Category. The relevant portion of the reply dated 10.06.2019 given under Right to Information Act is reproduced herewith below as under: -

"Point 1: One (1) person was appointed as Inspector of Central Excise of CBIC in the Category of Person with disability (PWD) who have been granted promotion to the post of Superintendent of Central Excise of CBIC since 01.01.2004.

Point 2: Name- Shri Suwada Sreenivas has been promoted to the post of Superintendent in the year 2018."

A true copy of reply dated 10.06.2019 to the RTI Application is annexed herewith as **ANNEXURE C-4** at (Pages 43).

10. That the Petitioner Nos. 1 & 2 have made detailed representations vide their individual representations dated 15.10.2019 and the Petitioner No.3 have also made detailed representations vide his representations dated 22.01.2019 & 04.07.2019 before the Respondent No.3 seeking reservation in promotion under PWD Category from the grade of inspector of Central GST & Central Excise to the grade of Superintendent of Central GST & Central Excise, in view of the aforesaid Notification and referred judgment and order of this Hon'ble Court. True and typed Copy of the representations dated 15.10.2019 of Petitioner No.1&2 and dated 22.01.2019 & 04.07.2019 of Petitioner No.3 before the Alleged Contemnor No. 3 is annexed herewith as **ANNEXUREC-5** from(pages 44 to 61).

11. That the Respondent No.3, rejected the aforesaid representations dated 15.10.2019 of the Petitioners No. 1 & 2 vide Letter F. No. II/03-43/CCO/2019 dated 08 .11.2019holding that *"Intelligence Officers may be informed that the reservation to PWD category is not available in the grade of Superintendent of Central Excise as the same is not an **"identified post"** as per the Notification No. 16-15/2010-DD-III dated 29.07.2013 issued by the Ministry of Social Justice and Empowerment of the*

*Government of India. Therefore, the claim of the above officers that they are entitled for reservation in promotion from the grade of Inspector to the grade of Superintendent of Central Excise is devoid of merits". True Copy of the rejection letter regarding petitioner No.1 and 2 dated 08.11.2019 of the Alleged Contemnor No. 3 is annexed herewith as **ANNEXUREC-6** from (Pages 62).*

12. That the Respondent No.3, also rejected the aforesaid representations dated 22.01.2019 & 04.07.2019 of the Petitioner No. 3 vide letter F. No. II/03-16/CCO/2017 PT-III dated 21.02.2019 and letter F. No. II/03-16/CCO/2017 PT-III dated 30.09.2019 holding that reservation to PWD category is not available in the grade of Superintendent of Central Excise as the same is not an "identified post" as per the Notification No. 16-15/2010-DD-III dated 29.07.2013 issued by the Ministry of Social Justice and Empowerment of the Government of India. True and typed Copy of the rejection letters regarding petitioner no.3 dated 21.02.2019 and 30.09.2019 of the Alleged Contemnor no. 3 is annexed herewith as **ANNEXUREC-7** from (Pages 63 to 64).
13. That it is pertinent to mention here that as per Note 3 & Note 4 of Notification and Para 2 (ii) & (iii) of ANNEXURE-B of Notification dated 29.07.2013 aforesaid, "*If a post is already held by a person with disability, it should be deemed to have been identified, and If a post is identified in the feeder grade, the posts in the promotional grade should*

also stand identified. The Superintendent of Central Excise, being a 100% promotional post from the feeder cadre of Inspector of Central GST & Central Excise, is covered by Note 4 of Notification and Para 2 (iii) of Annexure-B stipulated for an identified Post for PWD. In view of Letter F. No. C.18013/08/2008-AD.III(B) dated 01.07.2010 issued by the Respondent no. 2 and Note 4 of Notification and Para 2 (iii) of Annexure-B of Notification, observation of the Respondent no. 3 that post of Superintendent of Central Excise is not an identified post in view of the *Notification No. 16-15/2010-DD-III dated 29.07.2013*, is illegal and devoid of any merit.

14. That, it is pertinent to mention here that Rejection Orders passed by Respondent/Contemnor No.3 are in contravention of the law laid down by this Hon'ble Court, is contemptuous and have been passed knowingly and intentionally ignoring the directions of this Hon'ble Court. In their representation, the petitioners had annexed the copy of the aforesaid judgments and had also categorically mentioned the same in their representation. However, the Alleged Contemnors did not consider the same and in a blatant manner rejected the same. Thus, the Respondents are guilty of contempt of this Hon'ble Court for flouting the order.
15. That the eligibility for promotion from the grade of Inspector of Central GST & Central Excise to the grade of Superintendent of Central GST & Central Excise is governed

by Superintendent of Central Excise Recruitment Rules. The Petitioners No.1 and 2 are eligible for consideration for promotion w.e.f. 05.08.2019 from the grade of Inspector of Central GST & Central Excise to the grade of Superintendent of Central GST & Central Excise as they had already completed 2 years of regular service in the grade of Inspector of Central GST & Central Excise on 05.05.2016 & 29.05.2016 respectively as stipulated in Superintendent of Central Excise Recruitment Rules, 2019 dated 05.08.2019 issued by Under Secretary (Ad. IIB), Department of Revenue, Ministry of Finance, Government of India , and the Petitioner No.3 is eligible for consideration for promotion w.e.f. 13.12.2018 from the grade of Inspector of Central GST & Central Excise to the grade of Superintendent of Central GST & Central Excise as he had already completed 6 years of regular service in the grade of Inspector of Central GST & Central Excise on 16.02.2017 as stipulated in Superintendent of Central Excise Recruitment Rules, 2018 dated 13.12.2018 issued by Under Secretary (Ad.IIB), Department of Revenue, Ministry of Finance, Government of India.

16. That the Petitioners have not been granted reservation in promotion under PWD Category from the date of their eligibility in defiance of the judgment dated 30.06.2016 passed by this Hon'ble Court in Writ Petition (Civil) No. 521 of 2008 with Civil Appeal No. 5389 of 2016 (Arising out of SLP (Civil) No. 244 of 2016) and in view of the order dated

06.12.2017 in Contempt Petition (Civil) No. 856 of 2017 in Civil Appeal No. 9096 of 2013 even after submitting their detailed representations before the Respondent/Alleged Contemnor No.3.

17. That the Petitioners No. 1, 2 & 3 are eligible for reservation in promotion under PWD Category from the grade of Inspector of Central GST & Central Excise to the grade of Superintendent of Central GST & Central Excise in view of the aforesaid judgment and order passed by this Hon'ble Court.
18. That the Respondent No.3 has issued a tentative list of officers in the grade of Inspector of Central GST & Customs who are eligible for consideration for promotion to the grade of Superintendent of Central GST & Customs for the vacancy year 2020 vide letter F. No. II/03-45/CCO/2019 dated 14.11.2019 in deliberate ignorance of the judgment and order of this Hon'ble Supreme Court, the petitioners despite being in 'PWD category' have not been included in tentative list of officers in the grade of Inspectors of Central GST & Customs who are eligible for consideration for promotion to the post of Superintendent of Central GST & Customs. The true copy of the letter F. No. II/03-45/CCO/2019 dated 14.11.2019 is annexed herewith as **ANNEXURE C-8** at (Pages 65 to 66).
19. That Hon'ble Supreme Court in "*Contempt Petition (C) No. 928 of 2016 in (Transfer Case (C) No. 95 of 2015)*" *Girish*

Mittal Versus Parvati V. Sundaram & Anr.”in its judgment dated 26.04.2019 held as follows: -

“9. We do not agree with Mr. Gupta that a contempt petition is maintainable only at the behest of a party to the judgment. The directions issued by this Court are general in nature and any violation of such directions would enable an aggrieved party to file a contempt petition.”

Therefore, this instant contempt petition in Writ Petition (Civil) No. 521 OF 2008 in case of Rajeev Kumar Gupta & Others versus Union of India & Others is filed, as the directions issued by this Hon’ble Court to Government of India vide judgment dated 30.06.2016 in “Writ Petition (Civil) No. 521 of 2008 with Civil Appeal No. 5389 of 2016 (Arising out of SLP (Civil) No. 244 of 2016) has not been complied by the alleged contemnors.

20. That the Petitioners state that they have not filed any such or similar Contempt Petition against and from the aforesaid order dated 30.06.2016 passed by this Hon’ble Court in Writ Petition (Civil) No.521 of 2008 with Civil Appeal No. 5389 of 2016.

21. That it is in the interest of justice that the contempt proceedings may kindly be initiated against the Respondents/Alleged Contemnors and they may be punished for the contempt of Court.

PRAYER

In view of the aforesaid facts & circumstances, it is therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to: -

- a) initiate contempt proceeding against Contemnors and punish them in accordance with law for knowingly violating the Judgment and Order dated 30.06.2016 passed by this Hon'ble Court in Writ Petition (Civil) No. 521 of 2008 with Civil Appeal No. 5389 of 2016.
- b) direct the respondents/alleged contemnors to grant due promotion to the petitioners under PWD Category from the grade of Inspector of Central GST & Customs to the grade of Superintendent of Central GST & Central Excise with notional benefits w.e.f. dates of their eligibility and seniority in view of judgment dated 30.06.2016 passed by this Hon'ble Court in Writ Petition (Civil) No. 521 of 2008 with Civil Appeal No. 5389 of 2016 (Arising out of SLP (Civil) No. 244 of 2016).

And/OR

- c) pass any other or further order(s) as this Hon'ble Court may deem just and proper in the facts and circumstances of the present case in order to meet the ends of justice.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE PETITIONERS, AS IN DUTY BOUND, SHALL EVER PRAY.

DRAWN BY:

Sandeep Kumar Mishra
Filed by:
Advocate

Drawn on: 04.11.2019 **(Ashwani Kr. Dubey)**
Filed on: 07.12.2019 Advocate for Petitioners