

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

+ Reserved on: February 12, 2009  
Date of Decision: February 27, 2009

**CM 16704/2007 in Cont. Cas. (C) No. 602/2004**

BRIJ KISHORE PUSHP .....Petitioner  
Through: Mr. R.K. Saini, Advocate  
  
Versus  
SH. ARUN GOEL & ANR. ....Respondents  
Through: Mr. S.N. Choudhri, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment?No
2. To be referred to the Reporter or not?Yes
3. Whether the judgment should be reported in the Digest?Yes

**J U D G M E N T**

**MANMOHAN, J**

1. The petitioner in a disposed of Contempt Petition has now filed the present application with the following prayers:-

*a)summon the CEO/General Manager of the Respondent/BRPL to explain his conduct. Respondents be further directed to bring to the court the cheque of the amount due to the petitioner in terms of the orders passed by this Hon'ble Court for immediate delivery of the petitioner and they may also be directed to personally pay damages/compensation as well as the costs of this application to the petitioner for unnecessarily completing him to knock at the doors of this court time and again.*

*b)pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."*

2. The facts relevant for disposal of the present application are that the Petitioner filed Writ Petition (C) No. 1642 of 2002 against the erstwhile

Delhi Vidyut Board ('DVB') for a direction to grant third time-bound promotional grade to Petitioner with effect from 30.7.1998 as well as all consequential and retiral benefits. By an Order dated 8.12.2003 disposing of W.P. (C) No. 1642 of 2002, this Court directed as under:

*“(a) If in the DPC, which met in the month of May, 2001, name of the petitioner was considered but recommendations have been put in a sealed cover, same shall be opened and given effect to.*

*(b) If the name of the petitioner was not considered by the DPC review DPC be convened and name of the petitioner be considered with effect from the date the third time promotional scale has been granted to the persons junior to the petitioners.*

*With the directions aforesaid, the writ petition stands disposed of.”*

3. Even while the said writ petition was pending, DVB was unbundled and split into different entities with effect from 1.7.2002 in terms of the Delhi Electricity Reforms Act, 2000 ('DERA') and the Delhi Electricity Transfer Scheme Rules 2001. The Delhi Power Company Ltd. (the Delhi Transco Limited) ['DPCL/DTL'] became the successor entity to DVB as far as the present case is concerned.

4. On 17.5.2004, this Court passed the following order in petitioner's CM No. 6733 of 2004 in Writ Petition (C) No. 1642 of 2002 :-

*“.....Since persons junior to the petitioner were granted benefit of the third time bound promotion scale w.e.f. 30.7.1998 vide order dated 31.5.2001, it is obvious that right of the petitioner to be considered for grant of third time bound promotion scale has to be w.e.f. 30.7.1998.....”*

5. Thereafter, the Petitioner filed the present Contempt Case (C) No. 602 of 2004 on 16.8.2004. A reply was filed on 21.7.2007 by BSES Rajdhani Power Limited (BRPL) stating that judgment of a Division Bench of this Court in *Govt. of NCT of Delhi v. K.R.Jain & others, LPA 98/2005, decided on 30<sup>th</sup> March, 2006*, was not applicable to BRPL since it was not a party to the said judgment. It was further claimed that BRPL filed Writ Petition (C) No. 550 of 2005 in this Court with regard to payment of past liabilities of employees of erstwhile DVB. After dismissal of the said writ petition, BRPL approached the Hon'ble Supreme Court. Its Appeal is registered as C.A. No. 4270 of 2006 and is pending. It is claimed that “it is only after the decision of the Hon'ble Supreme Court of India that any further action can be taken in the matter concerning the petitioner by the non-applicant/BSES.”

6. However, this Court on 24<sup>th</sup> August, 2007 disposed of petitioner's contempt petition by directing BRPL to implement the judgment dated 8.12.2003 passed by this Court in W.P. (C) No. 1642 of 2002 within a period of four weeks and in any event not later 24.9.2007. It was left open to BRPL to inform the petitioner that its compliance is without prejudice to its contentions in its pending appeal in the Hon'ble Supreme Court and would be subject to final orders that may be passed thereon.

7. Subsequently, even a review petition filed by respondent/BRPL was dismissed by this Court on November 02, 2007.

8. Thereafter, petitioner filed present application stating that even though there was no stay of order dated 24<sup>th</sup> August, 2007 whereby present contempt petition was disposed of, yet respondents had not complied with the said order. In the said application, it was further stated that even costs of Rs. 5,000/- imposed by this Court had not been paid to petitioner.

9. Respondents in their reply to present application have pointed out that costs of Rs. 5,000/- had already been paid to petitioner and further that petitioner was duly considered by a DPC constituted by erstwhile DVB and on its recommendation a third time bound promotion was granted to petitioner on 19<sup>th</sup> October, 2001 with effect from 21<sup>st</sup> March, 2001. In the reply it was further stated that petitioner was involved in a vigilance case in which penalty of "CENSURE" was imposed on him by erstwhile DVB vide its order dated 20<sup>th</sup> March, 2001. In view of the aforesaid penalty imposed on 20<sup>th</sup> March, 2001, it was submitted that petitioner had been granted, in accordance with Rules, third time bound promotion scale from immediately next day of imposition of penalty of "CENSURE".

10. Though no rejoinder was filed by petitioner, yet Mr. R.K. Saini, learned Counsel for petitioner contended that in view of specific directions given by this Court on 8<sup>th</sup> December, 2003 and 17<sup>th</sup> May, 2004, petitioner had to be granted third time bound promotion scale with effect from 30<sup>th</sup> June, 1998.

11. I may mention that present application is confined only to non-implementation of order dated 24<sup>th</sup> August, 2007 and, therefore, petitioner in

present application cannot agitate the issue that respondents were bound in law to ignore punishment of “CENSURE” imposed upon petitioner. In fact, there is no averment/allegation to this effect.

12. Moreover, in my view, petitioner’s submission is untenable in law inasmuch as when the orders dated 8<sup>th</sup> December, 2003 and 17<sup>th</sup> May, 2004 were passed, it was not brought to the knowledge of this Court that a penalty of “CENSURE” had been imposed by DVB on 20<sup>th</sup> March, 2001.

13. Further, under Contempt of Courts Act, to constitute a civil contempt, there must be a willful disobedience of a specific direction given by a Court. Since, the issue of “CENSURE” was not raised before this Court, when it passed orders dated 8<sup>th</sup> December, 2003 and 17<sup>th</sup> May, 2004, it cannot be said that respondents were bound in law to ignore the said punishment.

14. Consequently, present application is dismissed but petitioner is granted liberty, if so permissible and in accordance with law, to challenge respondents’ action of imposing CENSURE as well as of granting third time bound promotion scale from next date of imposition of punishment of “CENSURE”.

15. With the aforesaid observations, present application is dismissed but with no order as to costs.

**FEBRUARY 27, 2009**  
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**MANMOHAN, J**