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| Serial No. and  Date of order. 1 | Order of the Tribunal with signature  2 | Office action with date  and dated signature  of parties when necessary  3 |
| **11**  **22.02.2018**  **Sanjib** | **For the Applicant : Mr. Indranath Mitra,**  **Mrs. Sonali Mitra,**  **Learned Advocates.**  **For the Contemnor/OP (P&AR Deptt) :Mr. Apurba Lal Basu,**  **Learned Advocate.**  **For the Contemnor/OP (M&SSI Deptt):Mrs. Sunita Agarwal,**  **Learned Advocate.**    The applicant has filed this application under section 17 of the Administrative Tribunals Act, 1985 praying for issuance of contempt rule against the contemnor for intentional violation of the order dated June 5, 2013 passed by this Tribunal in connection with OA No. 1330 of 2011.  It is relevant to quote paragraph 12 of the judgment passed by the Tribunal on June 5, 2013 in OA No. 1330 of 2011 which is as follows :  *“12. We accordingly direct the Respondents, particularly Respondent no. 3 (Additional Chief Secretary, Department of Micro and Small Scale Enterprise and Textiles, Government of West Bengal) to review the case of the applicant in the light of the decision taken in the case of Prakash Kumar Chowdhury and others as cited by the applicant and if the applicant is similarly placed, then we direct the state respondent to grant similar benefits as have been allowed to the said Prakash Kumar Chowdhury and others like exemption from passing departmental examination with effect from the date of retirement, grant of increments on due dates on notional basis, refixation of pay and sanction of retirement benefits on the basis of notional pay on the date of retirement. We further direct that this order should be complied with by issue of necessary orders to be communicated to the applicant within a period of 4 (four) months from the date of communication of this judgment.”*  The contention of the applicant is that the applicant is similarly circumstanced with Prakash Kumar Chowdhury and others and as such the applicant should have been granted exemption from passing departmental examination with effect from the date of retirement with other consequential benefits as directed by the Tribunal. The present contemnor was not a party to the original application, but the contemnor was impleaded as contemnor in the contempt application with the leave of the Tribunal.  Relying on paragraph 19 of the judgment in case of “Maninderjit Singh Bitta v Union of India” reported in (2012) 1 SCC 273, Mr. Indranath Mitra, Learned Counsel for the applicant submits that the contemnor has intentionally and deliberately violated the order passed by the Tribunal. Naturally, we have to decide whether the contemnor intentionally violated the order passed by the Tribunal. On perusal of the judgment of the Tribunal passed on June 5, 2013 in OA No. 1330 of 2011 in general and on consideration of paragraph 12 of the judgment as quoted above, we find that the benefits should be given to the applicant if the applicant is similarly circumstanced with Prakash Kumar Chowdhury and others as contended on behalf of the applicant before the Tribunal at the time of passing order in connection with the original application. The compliance report submitted by the contemnor before the Tribunal on January 3, 2016 was not accepted by the Tribunal by its order dated January 28, 2016 and the contemnor was directed to submit a comprehensive compliance report. Accordingly, on September 21, 2016, the contemnor submitted fresh compliance report by giving comparative chart of service record of Prakash Kumar Chowdhury and the present applicant to establish that the applicant is not similarly circumstanced with Prakash Kumar Chowdhury. Exception to the said report filed on behalf of the applicant is also considered by us.  It appears from the report submitted by the contemnor on September 21, 2016 in compliance with the direction of the Tribunal given on August 5, 2016 in CCP No. 101 of 2014 that the present applicant completed 14 (fourteen) years of service as HDO, while Prakash Kumar Chowdhury completed 20 (twenty) years of service as HDO. While Prakash Kumar Chowdhury appeared in departmental examination for 8 (eight) times and cleared 3 (three) papers out of 4 (four) papers, the applicant appeared in the departmental examination only 2 (two) times and cleared only 1 (one) paper out of total 4 (four) papers. It further appears from the report submitted by the contemnor on September 21, 2016 that the case of both the applicant and Prakash Kumar Chowdhury were referred to the Public Service Commission for its concurrence to grant exemption from appearing in the departmental examination. While the Public Service Commission granted exemption on consideration of the service career and the background of submission of application for exemption by Prakash Kumar Chowdhury, the Public Service Commission did not grant exemption to the present applicant on consideration of his service career and the background of filing the application for exemption. Since the exemption cannot be granted by the contemnor alone without consulting Public Service Commission and since Public Service Commission did not grant exemption to the present applicant from appearing in the departmental examination, we are of the view that the present applicant is not similarly circumstanced with Prakash Kumar Chowdhury. As the applicant is not similarly circumstanced with Prakash Kumar Chowdhury, the question of granting exemption from appearing in the departmental examination to the applicant with effect from the date of retirement and other consequential benefits does not arise.  In view of our above observation, we cannot persuade ourselves to hold that the contemnor has violated the order and judgment passed by the Tribunal on June 5, 2013 in OA No. 1330 of 2011. While we agree with the proposition of law laid down by the Hon’ble Supreme Court in “Maninderjit Singh Bitta v Union of India” (supra) cited on behalf of the applicant, we would like to point out that the ratio of the said decision has no manner of application in the present contempt application, as the contemnor has not violated the order passed by the Tribunal. As a result, the contempt application is dismissed.  Let a plain copy of the order be supplied to both the parties.  **( S.K. DAS ) ( R. K. BAG )**  **MEMBER(A)**  **CHAIRMAN IN CHARGE** |  |