

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

This is the 21st day of February 2020

Misc. Contempt Petition No. 330/00203 of 2018

In

ORIGINAL APPLICATION NO. 330/00891 of 2014

Present:

HON'BLE MR.DEVENDRA CHAUDHARY, MEMBER (A)
HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

Sanjary Kumar Mishra S/o Shri Onkar Nath Mishra, Resident of House No. 424/2, Balaji Colony, Bhagawnpur (Ext) Lanka BHU, Varanasi (U.P).

.....Applicant.

By Advocate: Shri Sanjary Kumar Shukla

VERSUS

Shri Bishwajit Kumar Singh, IFS Commissioner, Navodya Vidyalaya Samiti, Department of School Education and Literacy, Government of India, B- 15, Institution Area, G.B Nagar, Sector-62, Noida, (U.P)

.....Respondent

By Advocate : Shri N.P. Singh/ Jitendra Prasad

ORDER

BY HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

Heard Shri Anil Kumar Singh proxy counsel for Shri Sanjay Kumar Shukla, learned counsel for the applicant and Shri Jitendra Prasad, learned counsel for the respondents.

2. The present contempt petition has been filed by the applicant Sanjay Kumar Mishra seeking initiation of proceeding against respondent Bishwajit Kumar Singh for willful disobedience of the order dated 31.07.2018 passed in O.A. No. 891/2014 titled Sanjay Kumar Mishra Vs. Union of India and others. It would be appropriate to refer to the direction given by the Tribunal in the aforementioned order, which reads as under:-

"6. In view of the above submissions and taking into consideration the fact that the applicant seems to have a grievance regarding the evaluation of his answer sheet, we dispose of this O.A. at this stage with the consent of the learned counsels for both the parties with a direction that if the applicant files a fresh representation before respondent No.2/competent authority alongwith a copy of this order, within a period of 15 days from the date of receipt of copy of this order raising his grievances regarding evaluation of his answer sheet and other grievances, if any, then the respondent No.2/competent authority shall consider and decide the same as per the applicable rules/regulations/guidelines by passing a reasoned and speaking order copy of which shall be communicated to the applicant within a period of two months from the date of receipt of certified copy of this order".

3. It has been averred in the present application that the applicant dispatched his representation along with copy of order dated 31.07.2018 passed by this Tribunal through Registered Post on 13.08.2018 but till date nothing has been done by the respondent to ensure due compliance with the order of this Tribunal and, therefore, respondent has knowingly and willfully ignored the directions of the Tribunal and thereby committed contempt of this Tribunal. Applicant seeks action against the contemnor for having willfully disregarding the order of the Tribunal.

4. In reply, respondent has averred in his objection that the order dated 31.7.2018 passed by this Tribunal has been complied with in letter and spirit and the representation of the applicant dated 13.08.2018 has been disposed of by way of speaking and reasoned order dated 4/5.12.2018, as such, the present application is not

maintainable. It is denied by the respondent that he has willfully disregarded the order of the Tribunal and that the delay in disposing the representation was neither deliberate nor intentional but rather due to administrative reason. Hence, the application be dismissed.

5. In the written statement/rejoinder affidavit, applicant has averred that the compliance affidavit filed by opposite party is neither maintainable nor admissible either on law or on fact and that respondent has tried to mislead this Tribunal by way of fraudulent practices and has again reiterated the averments made in the Contempt Application.

6. It has been argued by learned counsel for respondent that representation filed by the applicant was duly considered and disposed of by the respondents vide Order No. F:10-7/2018-NVS (Estt-I)/10335 dated 04/05.12.2018 and, therefore, no willful or deliberate contempt of the order of the Tribunal was committed by the respondent. It is further argued by the learned counsel for the respondent that since the representation of the applicant was rejected by the respondent, the present application has been filed to harass and coerce the respondent into accepting the representation of the applicant even though it is not backed by facts and law. Learned counsel submits that applicant has willfully and deliberately made false accusations in the present application and therefore, the same should be dismissed and heavy costs be imposed upon the applicant for filing a false and frivolous application and thereby wasting the valuable time of the Tribunal.

7. On the other hand, learned counsel for the applicant while countering the arguments of learned counsel for the respondent submitted that due compliance of the order of the Tribunal has not been done by the respondent and having willfully and deliberately disobeying the order of the Tribunal is liable to be proceeded against under Contempt of Court Act and be punished for

committing contempt of the order of this Tribunal. Learned counsel for applicant submitted that the order disposing off the representation of the applicant itself shows the manner in which the respondent has committed the offence of contempt. Elaborating further, learned counsel for applicant referred to the order dated 4/5.12.2018 and submitted that the order itself shows that the representation was considered without taking into account the enclosures annexed with the representation and, therefore, there has not been full compliance with the order of the Tribunal by the respondent. Therefore, learned counsel for applicant submitted that respondent has openly and blatantly committed willful contempt of the order of this Tribunal and he be punished for commission of the said offence.

8. Countering the arguments of the learned counsel of the applicant, it has been vehemently argued by learned counsel for respondents that no enclosures were received by the respondent and that is why it has been mentioned in the order dated 4/5.12.2018 that the applicant has filed representation dated 13.08.2018 without enclosures.

9. We have heard and considered the arguments of the counsel for the parties and gone through the pleadings filed by them in support of their respective case.

10. Indubitably the representation was filed by the applicant and disposed off by the respondent. However, the disputed question is regarding the enclosures allegedly annexed with the representation. Respondent taking the stand that no enclosures were received by the office and therefore, the representation was disposed off as received without enclosures by the respondent.

11. On the other hand, disputing the stand taken by the respondent, stand of applicant is that his representation itself made

mention of the enclosures being attached in support of his case and that the postal receipt itself mentions the weight of the postal envelope which would show that enclosures were sent along with the representation. Learned counsel with regard to non-consideration of enclosures by the respondent while rejecting his representation also submitted that applicant would be satisfied if the respondent reconsiders his representation taking into account the enclosures which the applicant would supply to the respondent.

12. The representation sent to the respondent no doubt refers to the enclosures. In the present case, even if we assume that the enclosures were not sent by the applicant to the respondent but the respondent from the contents of the representation had knowledge about the enclosures, which were relied upon by the applicant in support of his claim made in the representation.

13. It is to be kept in mind that State and its functionaries is a model employer and that State is no ordinary party trying to win a case against its own employee or citizen by hook or crook. It is in the State's interests to meet honest claims, vindicate a substantial defence and never to score a technical point to overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal device provide such an opportunity. The State is expected to set a high standard of fairness.

14. Keeping in mind the facts of the case as well as equity, we are of the opinion that the respondent ought to have informed the applicant to submit the enclosures referred to in his representation, so that a just decision could be taken by the respondent while disposing off the representation filed by the applicant.

15. In view of the facts and circumstances of the case, applicant is directed to give the enclosures referred to in his representation to the respondent within 15 days of receipt of a certified copy of this order. On the receipt of the enclosures, the respondent would

consider afresh the representation of the applicant and dispose off the same by way of reasoned and speaking order within a period of 02 months from the date of receipt of enclosures with intimation to the applicant. Accordingly, Contempt Petition be consigned to record and applicant or respondent is at liberty to seek its revival on disposal of the representation, if they so choose.

(RAKESH SAGAR JAIN)

Member (J)

(DEVENDRA CHAUDHARY)

Member (A)

Manish/-