

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH NEW DELHI

C.P. No. 17/2001 in  
O.A. NO. 1438/1999

New Delhi, this the ..12<sup>th</sup>..day of July 2001.

Hon'ble Smt. Lakshmi Swaminathan, VC(J)  
Hon'ble Shri Govindan S. Tampi, Member (A)

Shri Parasanjeet Pandey,  
S/o Sh. Ram Adhar Pandey,  
R/o M-20, A, Shyam Nagar,  
Vishnu Garden,  
New Delhi 110018

Officiating S.D.E.  
MTNL, Karol Bagh Exchange,  
New Delhi.

.....Petitioner

(By: B.T. Kaul alongwith Shri Vinod Kumar, Advocates)

Versus

1. Shyamal Ghosh,  
Sescretary,  
Department of Telecommunications,  
Govt. of India,  
Sanchar Bhawan,  
New Delhi.
2. Sh. K.H. Khan,  
Chief General Manager,  
Mahanagar Telephone Nigam Ltd.  
Delhi Circle, Khurshid Lal Bhawan,  
Janpath, New Delhi.

.....Respondents/Contemners.

(By: Sh. V.K. Rao, Advocate)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A)

C.P. No. 17/2001 has been filed by Shri Prasanjeet Pandey, alleging non-implementation of the Tribunal's Order dated 24.8.2000 in OA No. 1438/99.

2. Head Shri B.T. Kaul, learned Counsel along with Shri Vinod Kumar for the petitioner and Shri V K Rao, learned counsel of M/s Sikri & Co. for the respondents.

3. O.A. No. 1438/99, filed by Sh. Prasanjeet Pandey, the petitioner in the present CP, and belonging to Telecom organisation, seeking his promotion to T.E.S. Group 'B' which had been held back on account of some pending investigation, was disposed by the Tribunal on 24.8.2000. The operative portion of the said order reads as below:

"19 . In the result the application succeeds and is accordingly allowed. The sealed cover procedure adopted in the case of the applicant by the DPC is quashed. The respondents are directed to give him all the consequential benefits, including the promotion to the higher post, from the date on which his immediate junior has been promoted, if he has been found fit for promotion by the DPC. This would not come in the way of the prosecution proceedings already initiated. The applicant is also ordered to be given s.5000/- towards costs of this OA".

4. In the contempt petition filed on 9.1.2001, the petitioner/applicant has alleged that till that date the respondents had neither promoted him with effect from the date of promotion of his immediate junior nor have they paid him the cost, as directed in the Tribunal's order. While replying to the notice, the respondents have submitted on 10.4.2001, that they had already issued on 27.1.2001, an order by the Competent Authority, promoting the petitioner to T.E.S. Group 'B' w.e.f. 21.10.98 on regular basis. This order has been issued in compliance to the Tribunal's order, even though subsequent to the Tribunal's order, the individual has been placed under suspension, as desired by CBI who had registered a Criminal case against him and filed the charge-sheet for offences punishable under Sections 120-B, 420, 467, 468 and 471 IPC, Section 25 of the Telegraph Act and Section 13(2) as well as Section 13(1) (d) of the Prevention of Corruption Act. With regard to the payment of costs, the respondents had prepared the bill in January 2001 and had informed the applicant on 17.01.2001 to collect the same from Cashier, in

the Office of AGM (Adn) under GM (West-I) MTNL, Mayapuri New Delhi. The applicant had not turned up to collect the same, though he had visited the office subsequently to collect his wages for subsequent months. Therefore delay if any, was squarely attributable to the applicant's inaction and respondents were not at all responsible. It is thus evident that the respondents had fully complied with the directions of the Tribunal and were not in any way, guilty of any disobedience or contempt, let alone any deliberate disobedience, they urge.

5. During the hearing on 11.4.2001, Sh. V.K. Rao, learned Counsel for the respondents handed over in court a cheque for Rs. 5000/- (Rupees five thousand only), to Sh. Vinod Kumar, learned Counsel for the applicant/Petitioner.

6. In his rejoinder dated 25.4.2001, the applicant/petitioner states that the respondents had not till then promoted him and as such were guilty of wilful disobedience of Tribunal's orders. According to him, the so called promotion order it seemed, was issued only to avoid punishment for wilful disobedience and thus it was clearly an afterthought. The promotion and suspension are two different issues, not to be interlinked. Still the respondents were trying to take advantage of their own wrongs. Instead of complying with the Tribunal's order fully, which called for revoking the suspension the respondents were continuing with the illegal suspension of the applicant. The applicant continued to be under illegal suspension as a result of the wilful disobedience of the Tribunal's order by colourable exercise of the powers by the officers of the respondent. It is further pointed out that there have been no direction from

CBI, that the applicant be placed under suspension. Still it has been reported to by the respondents to circumvent the Tribunal's orders. Two different issues of retrospective promotion and suspension have been linked up to avoid the implementation of the Tribunal's orders. Hence his illegal suspension dated 30.12.2000, CBI had initiated the investigation during 1997, while the suspension had been ordered on 30.12.2000, without there being any fresh reason for the above. On the aspect of payment of cost he states that he was not informed earlier as alleged and as the cheque was handed over only on 9.4.2001 in the Court it could not have been prepared earlier. The applicant reiterated his charges about his illegal suspension and the delayed payment of costs, which according to him showed the wilful and deliberate disobedience by the respondents which deserved to be dealt with a heavy cost.

7. On 16.5.2001 Sh. Kaul, learned Counsel for the applicant/petitioner made a categorical submission at the bar, on instructions from the petitioner who was also present in the Court, that the promotion order passed by the respondents, dated 27.1.2001 had not been served on him at any time before the same was placed at R-1 to the reply to the contempt petition. On behalf of the respondents, their learned counsel Sh. V K Rao undertook to produce relevant records in the above regard. Sh. Kaul also desired time to produce some other documents in support of his pleadings.

8. During the oral submissions on 6.7.2001, Sh. Kaul submitted copies of order dated 30.12.2001, passed by Chief Gen. Manager placing the applicant under suspension and another order dated 21.12.2000 whereunder delegation of powers

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of appointing authority of JTO's to CGMs of concerned circle stood withdrawn. He also attempted to produce one or two more inter departmental communications but withdrew the same as he could not duly certify the veracity of the documents as desired by the Court. On the other hand Sh. V. K. Rao, learned counsel for the respondents submitted copies of a number of documents duly authorised, which included letter dated 17.1.2000 under which the applicant was advised to collect the cost of Rs. 5000/- , orders from the Ministry of Communication, Deptt. of Telecommunication, No. 15-41/99-STG-II dated 5.1.2001 promoting the applicant to TES group 'B' w.e.f. 21.10.98, as well as No. STA-I/1-2/TPR/2001/KW/4 dated 27.1.2000 passed by Asstt. Gen. Manager in the same connection. Order of 29.1.2001 intimating that the suspension orders no. MTNL/Disc/Suspns/BP/SDE (ES 2863)/III/2 dated 30.12.2000 in respect of the applicant shall continue to be in force. He has also filed copies of the orders dated 11.4.2001 and 22.5.2001 on the payment of subsistence allowance to the applicant under suspension. Sh. Rao pointed out that both the directions of the Tribunal contained in its order dated 24.8.2001 have been duly complied with the respondents. The fact that the applicant has been placed under suspension subsequent to the Tribunal's order did not come in the way of his being promoted to TEs Group 'B' and the fact that he continued to be under suspension did not in anyway show that the order of the Tribunal has been flouted. On the other hand, Sh. Kaul contended that, the applicant having been placed under suspension on 30.12.2000, he could not have been promoted on 27.1.2001 as claimed by the respondents, without his suspension having been revoked. It was also not possible for the formalities of the applicant joining in the new and higher post to be completed and the alleged promotion

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if at all was only a formality or a ruse adopted by the respondents to circumvent and flout the order of the Tribunal, the respondents were, therefore, guilty of deliberate contempt and exemplary punishment should visit on them, according to Sh. Kaul.

9. We have carefully considered the rival contentions and perused the documents brought on record. Tribunal's order dated 24.8.2000 has directed that the applicant be given all consequential benefits including promotion to the higher post from the date on which his immediate junior has been promoted, if he has been found fit for promotion by the DPC and that he be paid Rs.5000/- towards the costs. The order has also specifically directed that it will not come in the way of the prosecution proceedings already initiated. In other words, the respondents were advised to promote the applicant from the date of promotion of his immediate junior and to pay him cost of Rs.5000/- but were permitted to go ahead with the prosecution proceedings already launched. It is seen that by order No.15-41/99-STG II dated 5.1.2000, Department of Telecommunications has promoted Sh. P. J. Pandey JTO to TEs Group 'B' w.e.f. 21.10.98 and posted him in MTNL, New Delhi, in compliance of the order dated 24.8.2000 in OA No.1438/19990 passed by CAT Principal Bench. Order No. STA-1/12/TFR/2001/KW/4 dated 27.1.2001 passed by the Asstt. Gen. Manager also refers to the same. It is further seen and the above order has been duly sent by Registered post. Besides letter No. SDE(a)/w-1/Staff-103/99-2000 dated 17.1.2000 is found to have been issued to the applicant advising him to collect cost of Rs. 5000/- which has been adjudged as payable to him by CAT's order. Both these actions have been accomplished during Jan. 2001 itself. Tribunal's

order dated 24.8.2000 had not fixed any specific period for its implementation. Therefore, the respondents have complied with the same, within six months from the order which, we consider to be a reasonable period. Therefore, it cannot be stated in anyway that there has been any wilful or contumacious disobedience on the part of the respondents which would attract action under Section 17 of the Administrative Tribunals Act, 1985 read with section 12 of the Contempt of Courts Act, 1971.

10. The next aspect that needs examination relates to the suspension of the applicant/petitioner. It is seen that the proceedings had been duly initiated against the applicant following CBI's complaint and filing of a charge sheet in the court involving offences punishable under IPC, Telegraph Act & Prevention of Corruption Act. He has been placed under suspension on 30.12.2000 in pursuance thereof. This act of Suspension cannot in any way be taken as flouting the order of the Tribunal as the Tribunal had very clearly directed in its order that promotion of the applicant in pursuance of its directions, would not come in the way of the prosecution proceedings already initiated. The promotion orders dated 5.1.2001/27.1.2001 will make it clear that the applicant stood promoted w.e.f. 21.10.98 in accordance with which he has been also allotted DOT Staff No.37591. That being the case the question of his suspension being revoked and his being reinstated before ordering his promotion did not at all arise. The respondents also have by their orders granted him the subsistence allowance in the higher grade and even revised it upwards on 22.5.2001. In the above view of the matter, we find that no mistake has been committed by them in this regard as well.

11. We find that the direction issued by the Tribunal vide its order dated 24.8.2000 while disposing of the O.A. No. 1488/99 have been duly and fully complied by the respondents both in letter and spirit. The documents brought on record amply bear this out. Still the applicant and his counsel have pressed this contempt petition on almost imaginary and baseless grounds to satisfy their ego. Contempt is a matter between the Court and alleged contemnor and it is to be seen as to whether the alleged contemnor has acted in any manner, wilful or contumacious to violate the directions of the court. The contempt proceedings are meant to uphold the legitimacy and supremacy of the law and not meant to settle personal scores, as have been repeatedly stressed by the Courts of law including the Hon'ble Apex Court. In the case of T. Sudhakar Prasad Vs Govt. of AP and Other, Hon'ble Supreme Court has observed as below:

" Contempt jurisdiction is exercised for the purpose of upholding the majesty of law and dignity of judicial system as also of the courts and Tribunals entrusted with the task of administering delivery of justice. Power of contempt has often been invoked, as a step in that direction, for enforcing compliance of orders of courts and punishing for lapses in the matter of compliance. The majesty of judicial institution is to be ensured so that it may not be lowered and the functional utility of the constitutional edifice is preserved from being rendered ineffective. The proceedings for contempt of court cannot be used merely for executing the decree of the court. However, with a view to preserving the flow of the stream of justice in its unsullied form and in unstinted purity willful defiance with the mandate of the court is treated to be contemptuous. Availability of jurisdiction to punish for contempt provides efficacy to functioning of the judicial forum and enables the enforcement of the orders on account of its deterrent affect on avoidance."

Therefore the Courts and Tribunals have to tread carefully while excising the Contempt jurisdiction and steer clear of aberrations, or personal vendetta. As Lord Erskine has stated "if the dignity of law is not sustained, its sun is set, never, to be lighted up again". Such would be the result

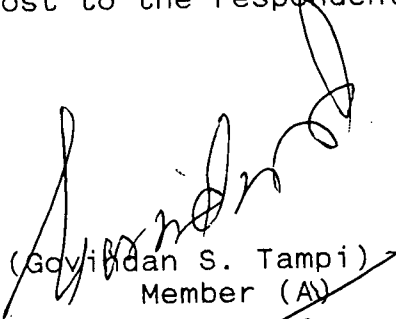


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if we uphold a Contempt petitions filed and pressed on imaginary grounds, as has been done in this case. We have, no doubt in the circumstances of the case, to hold that this is an instance where the petitioner/applicant has resorted to an action which is clearly an abuse of the legal process under the garb of Contempt action. We cannot either countenance or condone such an attempted abuse of process to satisfy personal whims.

12. In view of the above while dismissing the contempt petition as having no basis and being not at all enforceable in law, we direct the petitioner / applicant to pay an amount of Rs.8000/- (Rupees Eight thousand) towards cost to the respondents.

  
(Govindan S. Tampi)  
Member (A)

Patwal/

  
(Smt. Lakshmi Swaminathan)  
Vice Chairman (J)