

Central Administrative Tribunal, Principal Bench

CP-380/99 in  
OA-2376/99

New Delhi this the 28<sup>th</sup> day of April, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman  
Hon'ble Smt. Shanta Shastry, Member (Admnv)

1. Sh. M.K. Lavahe,  
S/o Sh. N. Lavahe,  
R/o 143, Kishangarh,  
Vasant Kunj,  
New Delhi.
2. Sh. Chand,  
S/o Shri Mam Chand,  
H.No.416, Chirag Delhi,  
New Delhi.
3. Sh. Om Prakash,  
S/o Shri Bishen Lal,  
R/o A-179, New Ashok Nagar,  
Delhi.
4. Sh. Raj Kumar,  
S/o Sh. Chhotey Lal,  
R/o 614, Chanderlok,  
Mandoli Road,  
Shahdara, Delhi.
5. Sh. Ram Kunwar,  
S/o Sh. Ram Prasad,  
R/o A-611, Sector-19,  
Noida (U.P.).

...Petitioners

(By Advocate Shri George Paracken)

-Versus-

Sh. B.S. Duggal,  
Director General Works,  
C.P.W.D., Nirman Bhawan,  
New Delhi.

...Respondent

(By Advocate Shri P.H. Ramchandani with Sh. M.K. Bhardwaj,  
Advocate)

O R D E R

By Reddy, J.-

The petitioners filed OA-2376/99, aggrieved by the order dated 3.11.99 issued by the respondent reverting them from the posts of Executive Engineer (Civil) to the posts of Assistant Engineer (Civil) and in the same order regularising the appointments as Executive Engineers and



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promoting other ineligible Assistant Engineers as Executive Engineers. While issuing notice, the Tribunal passed an interim order on 8.11.99 as under:

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"Pending hearing, there will be an ad-interim order in terms of the prayer containing at para 9 (i) of the OA. The interim order will be applicable provided there are vacancies in the post of Executive Engineers (Civil). The applicants will hold the post of Executive Engineer (Civil) on ad-hoc basis.'

The interim relief prayed for by the applicants, in the OA at para 9 (1), is as follows:

"(i) Pending final decision of this O.A., this Hon'ble Tribunal may direct the Respondent No.2 to withdraw the reversion orders in respect of the Applicants issued vide Office Order No.203 of 1999 dated 03.11.1999 and permit them to continue work as Executive Engineers (Civil) in respective places as the Respondents have filled up only 314 vacancies out of the 480 vacancies available for promotion."

2. It is stated by the petitioners that the Dasti order was served on the respondent on 8.11.96 itself.

3. The respondent appeared through their counsel on 22.11.99 and sought time for filing reply. While granting time the Tribunal directed that the interim order dated 8.11.99 to continue. On the strength of the interim order the petitioners had been continued as Executive Engineers (Civil). However, later on, the respondent reverted the petitioners as Assistant Engineers (Civil) from retrospective dates by orders dated 1.12.99, 3.12.99 and 9.12.99, which are filed as Annexure F colly. The petitioners complained that the above action of the respondent is in utter violation of the orders of the Tribunal dated 8.11.99 and 22.11.99.

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4. It is the case of the petitioners that there are at least 8 vacancies of Executive Engineers (Civil) as on 8.11.99 as on the date of granting interim relief by the Tribunal. Sh. S.K. Gupta has been shown as promoted as Executive Engineer, New Delhi whereas he died more than two years ago. Shri Vijay Kumar was shown as promoted as Executive Engineer, Cooch Behar, whereas he has already taken voluntary retirement three years ago. One post of Executive Engineer (Planning) at Hyderabad was lying vacant. Again one sanctioned post in Bangalore (Project Division) and another post in PWD, NCT Delhi was lying vacant. So also another post in the office of Additional Director, Border Roads, New Delhi was lying vacant. The petitioners, therefore, state that the respondent had no reason to revert the applicants, except to flout the specific orders of the Court.

5. The respondent in response to the notice issued by the Court on the contempt petition filed a reply and contested the CP. He denied to have violated the orders of the court, stating that as the vacancies arose due to the petitioners' reversion have since been filled up, they were no longer vacant and the petitioners once reverted there was no way to get them adjusted/repromoted against the available vacancies except after considering them along with other eligible persons, including their seniors for promotion, as per rules and that the OA having already been dismissed on 17.2.2000 the interim orders were no longer in force.



6. We have perused the pleadings and carefully considered the arguments of the learned counsel for the petitioners and the respondent. It is manifest from the ad interim order dated 8.11.99 that the Tribunal directed the respondents to withdraw the reversion order and to permit the petitioners to continue to work as Executive Engineers, provided there were vacancies. Thus, a clear mandatory direction was given to continue the petitioners as Executive Engineers, in which capacity they were working prior to the impugned order in the OA. Accordingly they were continued as Executive Engineers. They should have been continued as such till the orders are either vacated or modified. But, come December respondent reverted them!

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7. As regards the availability of vacancies, as per the petitioners there were 8 vacancies of Executive Engineers and the petitioners have demonstrated in the petition about the vacancy position. It is, however, not the case of the respondent that the vacancies were not available. A blatantly defiant stand was taken by him that once the petitioners stood reverted, there was no way of continuing the persons who have already been reverted unless they were again considered and promoted along with other eligible persons in accordance with the rules. This explanation to our mind is hardly convincing. At this stage, when a court grants stay of reversion, applicants continue to hold the post from which they were reverted and by virtue of the order they shall have to be continued. Particularly, in the instant case, when a positive mandatory order was given directing the respondent to continue the applicants provided, of course, there are vacancies, unless the respondent convinces the court that as there were no

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vacancies, the applicants could not be continued. The respondent would be violating orders if he acts otherwise. The explanation that reverted person was deemed to have been reverted and unless he was promoted again as per the rules he could not be continued in a promoted post, is wholly absurd and is in utter disregard to the dignity and majesty of the court.

8. To a straight question put by us to the learned counsel Sh. P.H. Ramchandani, appearing for the respondent, whether the respondent had violated the order or had not, the learned counsel could not bring himself to answer unequivocally to say 'no'. The learned counsel, however, came in support of his client, hastening to explain the circumstances and reasons surrounding ~~why~~ the decision <sup>L4</sup> ~~was~~ taken to revert the petitioners. He has brought to our notice the affidavit filed by the respondent in CP-317/99 in OA-1461/97 Sh. B.M. Singhal v. Smt. Kiran Aggarwal & Others where certain reasons were given to explain the necessity for passing the orders of reversion dated 9.12.99, 3.12.99 etc. It was stated therein, inter alia, that it was due to the operation of certain stay orders granted by the various Benches of the Tribunal. Learned counsel also attempts to give several reasons, which, were not, however, stated in the reply filed by the respondent. But no reason is good enough to justify violation of the orders of the court. Even assuming that there were sufficient <sup>On</sup> ~~justifiable~~ reasons for the respondent not to implement the interim orders, then he should have approached the Tribunal and sought clarification/modification of the orders, after explaining how it would be impracticable or impossible or not in public interest to implement the orders



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of the Court. He has not chosen to adopt this course. It is significant to notice that no attempt was made to controvert the specific allegation made by the petitioners regarding the availability of 8 vacancies.

9. Moreover, respondent had taken an additional plea that as the OA itself was dismissed on 17.2.2000, the interim orders dated 8.11.99 and 22.11.99 no longer remain in force and hence the question of obeying those orders would not arise. In our considered view the dismissal of the OA on merits of the case has no relevance to the charge of contempt in violating the interim orders. The contempt that is alleged is the violation of the order dated 8.11.99 in reverting the petitioners in December, 1999 and not any action taken by the respondent after the disposal of the OA. The learned counsel for the respondent has relied upon Commissioner/Secretary to Government, Health and Medical Education Deptt. Civil Sectt., Jammu v. Ashok Kumar Kohli, 1996 (1) SCSLJ 69. In that case the appellant having not been appointed to the post of Lecturer in the office of Ophthalmology department of Jammu and Kashmir, filed the Writ Petition in the High Court and pending the Writ Petition certain directions were passed by the High Court. But the respondents therein did not comply with the directions. The appellants filed contempt petition. In the contempt petition the respondents were directed to be present in person in the court to explain as to why and for what reasons the court order has not been complied with. Aggrieved by the said order the appellant carried the matter to the Hon'ble Supreme Court. The learned Judges of the Supreme Court have taken the view that the interim order passed by the High Court would "amount to over-reaching the

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main relief which ultimately may or may not be passed" in the Writ Petition. In view of the said finding the interim directions issued by the High Court were set aside and the High Court was requested to dispose of the Writ Petition expeditiously. The decision of the Supreme Court in the context of the above facts, in our view, has no application to the instant case where the Tribunal issued a direction to continue the petitioners as Executive Engineers. This order had become final as it was not challenged by the respondent. On the other hand, the respondent disobeyed the order in spite of availability of vacancies.

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10. The learned counsel lastly contends that it was open to the respondent to have complied with the order within a period of six months and meanwhile as the OA itself was dismissed the question of compliance does not arise. This contention is wholly misplaced. When the respondent was mandated to continue the petitioners the respondent had no option but to continue them. To say that it needs time for continuance of the applicants is wholly misconceived. On the other hand, in the instant case, the respondent had passed a fresh order <sup>reverting to</sup> ~~reverting~~ those who have been continued in accordance with the ad interim order, in December, 1999 with retrospective effect.

11. We are, therefore, of the view that the respondent is guilty of contempt of court and is liable for punishment under Section 12 of the Contempt of Courts Act, 1971. We are aware of the fact that the power of contempt should be sparingly exercised only to uphold the majesty and dignity of court vide Babu Ram Gupta v. Sudhir Bhasin & Another, 1980 (3) SCC 47. In the instant case the action of

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the respondent amounts to belittling the majesty of the court. He was contumacious of the interim orders and has given an engineered explanation why <sup>the</sup> orders could not be complied with.

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12. The apology tendered by the respondent to the charge is not only belated but hollow. No sincere regret is displayed. The Supreme Court in Debabrata Bandopadhyay and others, v. The State of West Bengal and another, AIR 1969 SC 189 has observed that:

"A person who offers a belated apology runs the risk that it may not be accepted for such an apology hardly shows the contrition which is the essence of the purging of a contempt."

13. In view of the aforesaid discussion, the respondent is convicted for contempt of Court under Section 12 of the Contempt of Courts Act, 1971 and taking a lenient view as regards sentence, he is sentenced to pay a fine of Rs.2,000/- (Rupees two thousand only). In default of payment of fine, the respondent is liable for simple imprisonment for 15 days. No costs.

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(Smt. Shanta Shastry)  
Member (Admnv)

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(V. Rajagopala Reddy)  
Vice-Chairman(J)