

5

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

C.P. NO. 403/2000

in

O.A. NO.2143/1997

New Delhi this the 16th day of November, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

1. Subodh Kumar Sharma
S/O Balram Prasad Sharma,
House No.458/2,
Near Railway Gurdwara,
Chungi Wali Gali,
Rambir Colony, Jind Junction,
Haryana.

2. Sultan Singh S/O Gulab Singh,
Village Ramgarh,
P.O. Bibipur, Distt. Jind,
Haryana.

... Applicants

(By Shri D.N.Goburdhun, Advocate)

-versus-

1. Shri S.P.Mehta,
General Manager,
Northern Railway,
Baroda House, Headquarters,
New Delhi.
2. Shri S.R.Ujlayan, C.A.O.(C),
Northern Railways,
Kashmere Gate, Delhi.
3. Shri Vinod Sharma, D.R.M.,
DRM's Office,
New Delhi Railway Station,
New Delhi.

... Respondents/
Contemners

(By Shri E.X.Joseph, Senior Counsel with Shri
R.L.Dhawan, Advocate and Contemner No.1 in person)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Present contempt petition seeks action against the 1st respondent/contemner for contempt of this Tribunal. On 24.10.2000 this Tribunal passed the following order :

[Handwritten signature]

"Shri R.L.Dhawan, learned counsel for respondents, who is present in the court, waives service.

By an order passed on 29.11.1999 in OA No.2143/1997 following directions were issued :

"2.The Delhi Division of the Northern Railway sent a list of 282 persons to the General Manager for according ex post facto approval for their re-engagement, but due to clerical or typing mistake the names of the applicants were left out. Later on the respondents, discovering their mistake sent another letter to the General Manager, but the names of the applicants were not included in the list although juniors whose names were in the earlier list were regularised and appointed as Khalasi."

"4. In view of the above mentioned acts, we dispose of this case with a direction to the General Manager, Northern Railway, Baroda House, New Delhi, i.e., Respondent No.2 to take a decision on letter Nos. 220-E/190-XI-A/EIV dated 23.3.1994 and 220-E/O/Screening/92 dated 23.5.1997 on the same basis as was done in the case of 282 persons whose list was sent earlier and if the applicants are found fit to grant them regularisation will entitle the applicants to all consequential benefits except monetary benefits. This will be done within a period of three months from the date of receipt of a copy of this order by the respondents."

Aforesaid order, it is clear, has directed the respondents to regularise the services of applicants as Khalasis. Aforesaid order was directed to be complied with within a period of three months. Copy of the aforesaid order, as per the application for extension of time filed on behalf of respondents being MA No.2013/2000, was served on 6.1.2000. In the circumstances, aforesaid order was required to be complied with on or before 5.4.2000. Respondents, however, have submitted the aforesaid application on 16.8.2000 which is well after the period provided for compliance, seeking extension of time to comply. Whenever an application for extension is to be submitted, the same has got to be within the time prescribed and not after the same has expired. When the present contempt petition is taken up for hearing counsel for respondents has produced copy of an order issued on 20.9.2000 in support of his claim that the order of 29.11.1999 has been complied with. A perusal of the order shows that applicants have been engaged not

as Khalasis as directed in the order but as Safaiwalas. The order of 29.11.1999 is clear and unambiguous. The same directs the respondents to appoint applicants as Khalasis. Action on the part of respondents to appoint the applicants as Safaiwalas in the teeth of the aforesaid directions, in our prima facie view, is nothing short of contempt of this Tribunal.

In the circumstances, the present contempt petition is stood over to 16.11.2000. Respondent No.1 herein who was the main party responsible for compliance is directed to remain present in person before the Tribunal on the adjourned date."

2. Aforesaid order has reproduced the material part of the order passed on 29.11.1999 in OA No.2143/97. The order has thereafter proceeded to emphasise that the said order is clear and unambiguous and the same requires the respondents to appoint the applicants as Khalasis. Aforesaid order was directed to be complied with within a period of three months from the date of the service of the order. Aforesaid order was served on the respondents on 6.1.2000. The order accordingly was required to be complied with by 5.4.2000. The respondents, however, chose to file an application on 16.8.2000, which was well after the period provided for compliance, seeking extension of time to comply. It is pertinent that in this application no grievance is made regarding the order directing the respondents to appoint the applicants as Khalasis. Aforesaid application of 16.8.2000 was rejected by observing that if an application for extension is to be submitted, the same has got to be within the time prescribed and not after the same has expired. Even when the aforesaid notice was issued in the contempt petition on 24.10.2000, the respondents had produced a copy of an order issued on 20.9.2000 in support of their claim that the order of 29.11.1999


N.P.

had been complied with. After noting that the order of 20.9.2000 has appointed the applicants not as Khalasis but as Safaiwalas, we have specifically observed that the aforesaid action of appointing the applicants as Safaiwalas in the teeth of the directions issued on 29.11.1999 was nothing short of contempt of this Tribunal. Despite the aforesaid observations, which again are clear and unambiguous, the respondents, and particularly the 1st respondent/contemner, has gone on to put in an application on 11.11.2000 for rectification of our order of 29.11.1999. In the application it is inter alia contended that the order directing the respondents to appoint the applicants as Khalasis is a mistake; the order should have directed the respondents to appoint the applicants as Safaiwalas. Similar is the tenor of the affidavit in reply submitted by the 1st respondent/contemner in the contempt petition. The charge in the present petition is contained in the order passed on 29.11.1999 and the plea of the respondent/contemner is contained in his reply. In para 3 of the reply, the 1st respondent/contemner has averred as under :

"3. That the said 282 persons have been re-engaged against the vacancies in different departments, as detailed below against requirement by the Divisional Railway Manager, Northern Railway, Delhi Division, New Delhi as detailed below :

Carriage & Wagon Safaiwala	236
Safaiwala in Commercial Branch	27
Shunting Porters	8

The postings and placement of the remaining 11 persons are not readily traceable in the records available and further efforts are being made to trace the records.



As will be observed about 97% of the persons included in the said list of 282 have been appointed as Safaiwalas and 3% as Shunting Porters etc. Accordingly, both the applicants in OA-2143/97 were regularized as Safaiwalas as was done in the case of above noted candidates.

It is submitted that in the judgement there is factual mistake when it has been stated that persons in the earlier list were regularised and appointed as Khalasis and a Misc. Application is separately being moved for correction of the said mistake."

3. Counsel for the applicants has on the basis of the aforesaid averment submitted that the same conceals more than what it reveals; the 11 persons mentioned are in fact those who have been appointed as Khalasis.


4. Be that as it may, we are satisfied that the 1st respondent/contemner is clearly guilty of contempt of this Tribunal. Not only he has blatantly defied the order of the Tribunal, he has further gone on to persist in his disobedience and he continues to do so even during the hearing of this petition.


5. The order of 29.11.1999 holds the field as of today. The respondent/contemner was bound to comply with the same. As we have already observed, our order of 29.11.1999 is clear and unambiguous. The same requires the respondents to appoint the applicants as Khalasis. The respondent/contemner in turn has persisted in saying that he will not appoint them as such but will appoint them only as Safaiwalas. This is nothing but blatant contempt of this Tribunal. In the circumstances, we hold the 1st respondent/contemner guilty of contempt of this Tribunal.

12.1

6. When the counsel for parties were being heard on the issue of sentence to be imposed, the contemner has stood up and tendered an unconditional apology. He has further offered to comply with the order by appointing the applicants as Khalasis during the course of the day. Despite this, we do not find that ~~a~~ contempt can be said to have been purged. However, taking the totality of the aforestated facts into consideration, we find that the ends of justice would be met by sentencing the contemner to simple imprisonment till the rising of the court and to pay a fine of Rs.5000/- (rupees five thousand) which amount will be paid by him personally and not from his department. In default of payment of fine he will undergo civil imprisonment for a period of one month. He is granted one week's time to pay over the fine.

7. Present contempt petition is accordingly disposed of.


(S.A.T. Rizvi)
Member (A)


(Ashok Agarwal)
Chairman

/as/