

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

CP No. 287/96 in OA No. 2181/96

(12)

NEW DELHI THIS THE 3rd DAY OF FEBRUARY, 1997.

HON'BLE MR.JUSTICE B.C.SAKSENA, ACTING CHAIRMAN
HON'BLE MR.K.MUTHUKUMAR, MEMBER(A)

Dr.R.R.Kishore
S/o Late Shri B.R.Kishore
R/o D-II/198 Kidwai Nagar(West)
New Delhi-110 023. Petitioner
(BY ADVOCATE SHRI B.B.RAVAL)

vs.

1. Shri P.P.Chauhan,
Secretary to the Govt.of India
Ministry of Health & Family Welfare
Nirman Bhavan, Maulana Azad Road
New Delhi-110 011.
2. Shri C.I.Bhatiya, Under Secretary
to the Government of India
Ministry of Health & Family Welfare
Maulana Azad Road,
New Delhi-110 011. Respondents

(BY ADVOCATE MRS.RAJ KUMARI CHOPRA)

ORDER

JUSTICE B.C.SAKSENA:

We have heard the learned counsel for the parties.

2. This contempt petition has been filed by the petitioner on the basis of the following allegations. His case is that on 10.10.1996, a Division Bench of this Tribunal had admitted OA 2181/96. The said OA was filed against an order dated 8.10.1996 by which the petitioner was informed, with regard to a note submitted by him on 4.10.1996 seeking permission to attend the 'Ist International Conference on Priorities in Health Care' Stockholm Sweden from 13-16 October, 1996, that permission to attend the abovementioned conference was denied.

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The order further stated: You are therefore requested not (repeat not) to attend the above mentioned conference.³ The petitioner's case is that since the OA was admitted and notice was issued, in view of the provision of Section 19(4) of the Administrative Tribunals Act, 1985 (for short, the Act) other proceedings under the relevant service rules as to the redressal of the grievances in relation to the subject matter of such application pending immediately before such admission stood abated. The petitioner further pleaded that the issuance of order dated 28.10.1996 placing the applicant under suspension amounts to violation of Section 19(4) of the Act and also the said suspension order is a threat to the petitioner and pressure tactics in order to prejudice the petitioner's aforesaid case pending before the Tribunal and as such constitutes an act of contempt on the part of the respondents.

3. The respondent No.2 has filed a short reply to the contempt petition. He has indicated in para 1 that the reply affidavit is on his behalf and on behalf of respondent No.1. In the reply, it has been indicated that in OA 2181/96, the petitioner has also prayed for an interim order as follows:

* That pending final decision on the application the operation of the impugned order No.L.21018/68/96-IH dated 8.10.1996 may be stayed.

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The respondents have indicated that when the said OA
came up for hearing on interim relief, the respondents
had accepted notice in the court and were given
one hour's time to file reply to the same and the case
was kept for hearing at 2.30 PM. When the reply was
filed, the Tribunal after hearing both the sides was not
pleased to grant any interim relief to the petitioner.
The respondents in their reply have further indicated
by the applicant
that they were informed/through a note dated 11.10.1996
which was received by them on 14.10.1996 as follows:

* In view of the order dated 10.10.96 passed
by the Hon'ble Tribunal, Delhi, after hearing
the Respondent in OA No.2181/96 admitting my
case in which I had challenged your
communication No.L.21018/68-IH, dated
8.10.96, I am proceeding to attend the "Ist
International Conference on Priorities in
Health Care" Stockholm, Sweden from 13-16
October, 1996"

The respondents in their reply have indicated that this
note discloses that the petitioner has with calculative
and malafide intentions misrepresented and flouted the
order of the Tribunal vide which the OA was only admitted.
Inspite of petitioner's specific prayer for interim relief
no order on interim relief was granted. The respondents

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plead that there was no direction to the Government to permit the petitioner to attend the said conference.

Nor the Government was prohibited from taking any action against the petitioner. It has also been contended that the petitioner's going out of the country was not made subject to the outcome of the OA. The respondents therefore maintain that no case for contempt of court has been made out against them.

4. The learned counsel for the petitioner laid great stress on the provision of Section 19(4) of the Act. The said provision reads as under:-

* Where an application has been admitted by a Tribunal under sub-section(3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.*

(Emphasis supplied)

The provision of Section 19(4) is self-explanatory.

Only proceedings in relation to the subject matter of the OA pending immediately before such admission have been provided to be abated. The order impugned in the OA was passed with reference to a note dated 4.10.1996 sent by the petitioner seeking permission to attend the conference. By the impugned order dated 8.10.1996, the said permission was refused and the petitioner was

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categorically informed not to attend the conference in question. No other representation of the petitioner with regard to permission to attend the conference is said to have been made which remained pending prior to the order passed for admitting the OA. In this view of the matter, the provisions of Section 19(4) are not at all attracted. Nothing was to abate. The learned counsel for the petitioner submitted that since the validity of refusal of permission to attend the conference was the subject matter of the OA and order of suspension passed even on the basis of his alleged act of disobedience of the mandate not to attend the conference were under the provisions of Section 19(4) to abate and no such order of suspension ^{could} ~~should~~ have been passed. We are ^{but} unable to agree. The provisions of Section 19(4) have to be construed strictly as indicated hereinabove. Since no representation seeking permission remained pending Section 19(4) is not attracted. It would have been attracted if such a representation would have been pending. It would have been abated after admission of the OA.

5. In our considered opinion placing any other interpretation ~~on~~ Section 19(4) would not be warranted. The petitioner challenged the order refusing permission to go to attend the conference. He had specifically prayed for an interim order that was not granted. Neither any interim order was passed directing respondents to permit the petitioner to go or providing that his

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attending the conference would be subject to further orders in the OA. In the absence of all this to agree to the submission made by the learned counsel for the petitioner about the scope of Section 19(4) would mean that though no interim order staying the operation of the impugned order has been passed, the petitioner can assume that an interim order is there and he could have gone to attend the conference. Since the OA is pending, we do not wish to say anything more. We only intend to indicate that Section 19(4) was not attracted and there was no bar placed on the respondents ~~to~~ ^{from} exercise, their powers of disciplinary action against the petitioner. We further wish to observe that the proposition propounded by the learned counsel for the petitioner in the facts will tantamount to an abuse of the process of law. The fact of merely filing a petition and an order of its admission having been passed cannot bring the Governmental administration to a stand still. To our mind this is not the intention of Section 19(4) of the Act.

6. The learned counsel for the petitioner in support of his submission on the scope and ambit of Section 19(4) has drawn our attention to para 22 of the contempt petition. In the said para it has been indicated that in the affidavit dated 30.9.1996 in OA No.1560/95 (an earlier OA filed by the petitioner) the respondents have indicated that since the matter was subjudice in

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the Tribunal the petitioner's representation cannot be entertained. We have called for the OA No.1560/95 and we find that the petitioner in his affidavit dated 11.7.1996 filed in OA No.1560/95 had stated that his representation with certain instructions said to have been approved by the Hon'ble Minister for Health and Family Welfare had been sent to the Director General of Health Services who in turn sent to the Additional Secretary, Health on 31.5.1996. It was in respect of the said representation that the averment in the counter-affidavit was that the matter was subjudice..

7. In the present case, as noted hereinabove, no representation with regard to seeking redressal of the grievances filed in the OA was pending before the order of admission. The petitioner cannot draw any support from the circumstance or the pleadings of the respondents in their counter-affidavit in OA 1560/95.

8. The learned counsel for the petitioner next drew our attention to a Supreme Court decision in Gurcharan Dass Chadha Vs. State of Rajasthan (AIR 1966 SC 1418). The facts of the said case disclose that a petition under Section 527 of the Code of Criminal Procedure for the transfer of a criminal case which was pending in the court of Special Judge, Bharatpur, Rajasthan to another criminal court of equal or superior jurisdiction was pending

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before the Hon'ble Supreme Court. The petitioner was the accused in that case. During the pendency of the said petition for transfer, the State Government served the petitioner with a notice and chargesheet to show cause why he should not be proceeded against for breach of Rule 8 of the All India Services(Conduct) Rules 1954. The Hon'ble the Supreme Court in the light of the facts in the said case was of the view:
* There could be no question in the present case that by charging the petitioner with proceedings of a different kind there was, if not direct, at least indirect pressure brought upon him in the prosecution of his petition for transfer.*

Hon'ble the Supreme Court was pleased to take the view that the petitioner before them was guilty of any lapse under the Service(Conduct) Rules or even guilty of an offence the action to which he would be ^{if} otherwise subject could wait till the present proceedings had terminated and there was really no reason to hurry with a charge against the petitioner which charge would have put him under duress of some kind.

9. The learned counsel for the respondents, Mrs. Raj Kumari Chopra in reply cited a decision reported in ((1990) 13 ATC 926) (M.R.Dewan Vs. K.P.Geetha Krishnan and others). This decision was cited to meet both the pleas of the present

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petitioner based on Section 19(4) of the Act as also the decision in Gurcharan Dass Chadha's case. The Bench had noted in paragraph 17 of their order that Section 19(4) of the Act and its ambit and scope has been considered by the Tribunal in numerous rulings which have been cited therein. In our opinion, the view taken therein is in accord with the view expressed by us hereinabove.

10. In Para 18 of their order, the Bench proceeded to consider the decision in Gurcharan Dass Chadha's case. It held that the legal position enunciated by the Hon'ble Supreme Court was binding. It further proceeded to observe:

"However, whether an action taken by the respondents during the pendency of the proceedings in this Tribunal, on the effect or bringing pressure, direct or indirect on the applicant, has to be seen from the facts and circumstances of each case."

It was observed that the Supreme Court has not laid down a universal rule to the effect that whenever any proceeding is pending in a court of law, the Government is barred from taking any action in exercise of its powers unless the taking of such action is barred by an interim order staying such action.

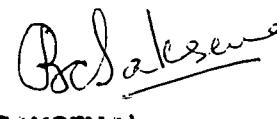
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11. In view of the above, there is no merit in the contempt petition which is dismissed. Notices issued to the respondents are discharged.


(K. MUTHUKUMAR)

MEMBER(A)


(B.C. SAKSENA)

ACTING CHAIRMAN

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