

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

CP No.125/95 in
OA No.601/93

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New Delhi this the 3rd day of August, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

N. Krishnamoorthi,
through Sh. G.K. Aggarwal,
Advocate, G-32, Ashok Vihar-I,
Delhi-110052.

...Petitioner

(By Advocate Sh. G.K. Aggarwal)

Versus

1. Dr. J.P. Singh,
Secretary,
Minister of Urban Affairs
and Employment, Nirman Bhawan,
New Delhi-110011.

2. Sh. K.K. Madan,
Director General (Works),
Central Public Works Department,
Nirman Bhawan,
New Delhi-110011.

...Respondents

(By Advocate Sh. B. Lall)

ORDER (Oral)
(Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A))

This Contempt Petition has been filed by the petitioner, alleging contempt in respect of the proceedings dated 6.2.95 in OA-601/93. It is stated in that order that an undertaking was given by the respondents and they have wilfully contravened that undertaking. That interim order reads as follows:-

"MAS-65 & 66/95
OA-601/93

Present: Sh. GK Aggarwal, Counsel for the applicant. Sh. B Lall and Sh GD Gupta, Counsel for the respondents.

MA-66/95 has been filed seeking an amendment of the OA. A copy of the OA, as it would stand after amendment if the MA is allowed, is also filed. MA-65/95 has been filed for an interim direction to the respondents not to promote from Chief Engineers (Electrical) and (Civil) to Addl Director General any person junior to applicant as per Annexure A-6. The respondents seek 4 weeks' time to

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file a reply to both the MAs. The 1d counsel for the official respondents submits that the promotion to Addl Director General be take place only after the seniority list of Chief Engineers is first issued, which has not yet been done. The 1d counsel for the applicant submits that in that event, a direction be issued to the respondents to expeditiously publish the seniority list of Chief Engineers and pending such publication a direction be issued that any promotion made to the grade of Addl Director General be subject to the outcome of this OA. We are of the view that in the first instance a reply to MA-65/95 should be filed by the respondents. Three weeks' time is granted for that purpose. (emphasis added)

The 1d counsel for the applicant states that as the interim prayer in the MA-65/95 is not being allowed, the concession made by him above, may be treated as withdrawn. This is noted."

The undertaking is stated to have been given in the emphasized portion of that order. It is stated that despite this undertaking and without publishing the seniority list of Chief Engineers the respondents convened a 'Screening Committee' in May, 1985 and recommended the ad hoc promotion of one Sh. Chandrapal (respondent No.8 in the OA) as Additional Director General and have taken steps to promote him. It is alleged that by this action they have flouted the solemn undertaking given to the Tribunal and thus committed contempt.

2. The respondents have filed a reply denying this allegation. Inter alia, it is stated that on 6.2.95 the learned counsel for the respondents stated as follows:-

"On this, the Counsel for the Respondents submitted that the re-revised seniority lists of SEs (Civil) and (Elect.) have been issued on the basis of Bansal's Judgment and preparation of the re-revised seniority lists of Chief Engineers on that basis (i.e.

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on the basis of re-revised seniority lists of SEs) is in hand and, as such "promotions to the posts of Addl. Director General could take place on that basis only after the seniority lists of Chief Engineers is first issued."

3. We have heard the learned counsel for the parties.

4. The learned counsel for the petitioner submits that in the reply of the respondents they have pleaded that what their counsel stated on 6.2.95 was somewhat different from what has been attributed to him in the order dated 6.2.95. He submits that it is not for the respondents, at this stage, to seek a correction in the proceedings already recorded by the Tribunal. He submits that there can be three forms of undertakings. The undertaking could be that an action will not be taken at all. The second and third undertakings are qualified undertakings. The second kind of undertaking may be in a positive language that the action will be taken after taking certain preliminary steps. The third kind of undertaking is in negative language that the action will not be taken until certain preliminary steps are first taken. In the present case the second type of undertaking was given and it has been flouted.

5. We have read the proceedings dated 6.2.95. We agree that the respondents cannot rewrite that order at this stage. If they felt that it was not properly recorded they could have sought a correction thereof immediately thereafter.

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6. Even as recorded by us, unfortunately, there is a defect therein. It is strictly not correct grammatically. In the emphasized portion of the order reproduced in para 1 above, the word 'be' is inappropriate. It would make sense only if it is substituted by the word "will".

7. We are of the view that contempt is a serious charge and has to be brought home unambiguously. As pointed out above, the alleged undertaking is not recorded properly and neither party had sought for a correction thereof.

8. That apart, we did not take it to be an undertaking at all, nor did even the learned counsel for the petitioner himself take it to be an undertaking as will be clear from what he submitted thereafter. This alleged undertaking should have satisfied him and he could have prayed that it be recorded and an order issued in terms thereof which, we could not have refused. He, perhaps had one more point to make, viz., that a time limit be fixed for publication of the revised seniority list. He could have merely made this additional prayer. Instead, in terms of proceedings dated 6.2.95, he also requested that pending such publication, a direction be issued that any promotion made to the grade of Additional Director General be subject to the outcome of this OA. If the learned counsel for the respondents had really given an undertaking that until the revised seniority list of Chief Engineers is published, no promotion to the post of Additional Director General

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would take place, there would be no sense in the learned counsel for the petitioner making such an innocuous request. It may also be added that the request was superfluous because such a direction had been given in the order dated 19.4.93 (Annexure R-3). This only shows that no such undertaking was given. This is further corroborated by the order passed on 20.4.95 (Annexure R-2) which disposed of MA-65/95, referred to in the proceedings dated 6.2.95, without any mention of the alleged undertaking.

9. In the circumstances, we do not find that any contempt has been committed. The notice issued to the respondents is discharged.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)
'Sanju'

N.V. Krishnan
3.8.95
(N.V. Krishnan)
Vice-Chairman (A)