

Central Administrative Tribunal  
Principal Bench, New Delhi

C.P.No.183/2002  
M.A.No.1230/2002 in  
O.A.No.1089/2000

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Hon'ble Shri V.K.Majotra, Member(A)  
Hon'ble Shri Shanker Raju, Member(J)

Wednesday, the 10th day of July, 2002

Arun Kumar Sharma  
s/o Shri Sriniveas Suman  
r/o C-48 Chander Nagar West  
Street No.3  
Delhi - 110 051.

... Applicant

(By Advocate: Shri A.P.Dhamija)

Vs.

1. Dr. C.P.Singh  
Medical Superintendent  
Dr. R.M.L.Hospital  
New Delhi.

2. Shri Surinder Mohan  
Deputy Director (Admn.)  
Dr. R.M.L.Hospital  
New Delhi.

... Respondents

(By Advocate: Shri R.D.Agrawal, Senior counsel with  
Shri Rajinder Nischal)

O R D E R (Oral)

By Shanker Raju, M(J):

With the following directions OA 1089/2000 was  
disposed of by an order dated 24.1.2001:

"In the circumstances, the OA succeeds. We quash and set aside the impugned order of compulsory retirement dated 27.5.1998 as well as the appellate authority order dated 28.11.1999. We, however, are not inclined to remand the matter back to the respondents, as three years have passed since then and also in the peculiar facts of the case, the respondents who had conducted a perfunctory inquiry should not be allowed to fill in the gaps. As a result, the respondents are further directed to reinstate the applicant in service with all consequential benefits within a period of two months from the date of receipt of the copy of the order. The intervening period between the date of compulsory retirement (27.5.1998) to the date of reinstatement shall be treated as on duty for all purposes. However, we

limit the back wages to 50%. We further direct the respondents to pass appropriate orders regarding regularisation of absence period of the applicant w.e.f. 19.4.1997 as per rules. No order as to costs."

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2. Respondents have carried the aforesaid order before the High Court of Delhi wherein the decision of the Tribunal was modified by the following order on 18.3.2002:

"Having heard the learned counsel for the parties, we are of the opinion that the findings of the learned Central Administrative Tribunal are absolutely in accordance with law. Keeping in view the decision of the Apex Court in State of Punjab and Others Vs. Dr. Harbhajan Singh Greasy reported in (1996) 9 SCC 322, we are of the opinion that part of the judgment and order of the Tribunal to the effect, whereby and whereunder, it declined to remit the matter back to the respondents on the ground that three years period had passed, cannot be sustained. We, therefore, are of the opinion that the matter may be considered afresh by the enquiry officer, before whom the parties shall be entitled to raise all contentions; in the event disciplinary authority deem it fit to do so. Such decision shall be taken by the disciplinary authority within two months from the date of communication of this order. This order is being passed having regard to the fact that the Tribunal itself has come to the conclusion that the Tribunal itself has come to the conclusion that the enquiry has been conducted perfunctory.

Writ petition is accordingly disposed of."

3. Learned counsel Shri A.P.Dhamija, appearing for the applicant, alleges wilful and contumacious disobedience on the part of the respondents inter alia on the following grounds:

3.1. It is contended that the Tribunal set-aside the impugned order of compulsory retirement and directed to reinstate the applicant with all

consequential benefits with 50% of the back wages within a period of two months and further direction of not remanding back the case, the High Court although upheld the findings of the CAT but for a limited purpose of remitting the matter back to the respondents in view the decision of the Apex Court in State of Punjab and Others Vs. Dr. Harbhajan Singh Greasy, (1996) 9 SCC 322, set-aside the portion where the decision was taken not to remit the matter back to the respondents with a further direction to the disciplinary authority to decide within a period of two months from the date of communication of the order of the High Court for afresh proceedings. In this background, it is stated that the directions regarding reinstatement and back-wages have not been interfered with which have not been complied with, despite expiry of two months as stipulated by the Tribunal resulting in wilful disobedience on the part of the respondents.

3.2. It is contended that the decision of the Apex Court in Dr. Harbhajan Singh Greasy supra would have no application in the facts and circumstances of the case as the same apply to an eventuality where the delinquent was under suspension and his dismissal has been set-aside, on afresh enquiry is to be deemed under suspension. As the applicant was not under suspension before he was dismissed, the aforesaid ratio would have no application. Moreover, it is contended that there is no direction of the High Court to place the applicant under deemed suspension or to deprive him of his reinstatement and 50% back-wages. Respondents have themselves interpreted the decision of the High Court.

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3.3. By referring to Rule 10(3) and 10(4) of the CCS (CCA) Rules, 1965, it is stated that Rule 10(3) would have no application. These rules cannot be read in isolation and Rule 10(3) applies to a situation where a Government servant was ordinarily under suspension whereas Rule 10(4) cannot be invoked by the respondents in view of a specific finding of the Tribunal to reinstate the applicant and to accord him 50% back wages. 27

3.4. It is contended that the respondents have issued an order on 3.5.2002 and instead of reinstating the applicant, and according him 50% back-wages committed contempt of the Tribunal as well as High Court by deeming the applicant under suspension w.e.f. 27.6.1998, i.e., from the date of his compulsory retirement and not reinstating him and according him all the consequential benefits as directed by the Court.

4. Applicant has also filed MA 1230/2002 in CP No.183/2002 to seek stay of the operation of order dated 3.5.2002 and also seeks to quash this order.

5. Shri R.D.Agrawal, learned senior counsel appearing for the respondents, denied the contentions of the petitioner and by referring to the decision in Dr. Harbhajan Singh Greasy's case supra, contended that the ratio laid down is that when the enquiry is found faulty, it is not proper to reinstate the petitioner with consequential benefits and the matter is remanded to the disciplinary authority to follow

the procedure from the stage the fault was pointed out. It is also stated that the pending such an enquiry the delinquent must be deemed to be in suspension and the consequential benefits would be depend upon the final outcome of such enquiry.

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6. Shri Agrawal has further stated that from the perusal of Para 16 of the order passed by the Tribunal after setting-aside the impugned orders and decision not to remand the matter back, as a consequence directions have been issued to the respondents to reinstate the applicant in service as the High Court has set-aside its operation, and remitted back the matter to the disciplinary authority the proceedings directions which have been issued as a consequence are deemed to be set-aside and the applicant cannot be reinstated and be accorded all the benefits.

7. By referring to Rule 10(4) of the CCS (CCA) Rules *ibid*, it is contended that when an order of dismissal has been set-aside by the Court, it is open for the disciplinary authority to place a Government servant under suspension pending further enquiry and in this exercise the order dated 3.5.2002 has been passed which is in consonance with the said rule and is in compliance of the directions of the High Court.

8. Lastly, by referring to the decision of Apex Court in *J.S. Parihar Vs. Ganpat Duggar and Others*, (1996) 6 SCC 291, it is contended that once the order is passed by the Government on the basis of

directions issued by the Court a fresh cause of action arises, whose redressal is to be sought in an appropriate forum and in a contempt a fresh direction cannot be issued.

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9. We have carefully considered the rival contentions of both the parties and perused the material on record. Without expressing any opinion as to the merits of the case, we find that the respondents have acted on the rival claim of the parties. However, observed that the contentions raised by the applicant as to the interpretation of the decision of the decision as well as in Dr. Harbhajan Singh Greasy's case supra and his resort to seek quashing of the order passed by the respondents certainly new cause of action accrued to him in consequence of an order passed by the respondents on 3.5.2002. In a contentious case where an order of the Court is subjected to different interpretations, as per Shri J.S.Parihar's case supra, the contempt is not the remedy.

10. In order to bring within the ambit of contempt, it is to be established that the respondents have acted in an utter disregard and wilful disobedience of the directions issued by the Court.

11. In the light of the aforesaid principle, we have examined the order passed by the respondents and we do not find any wilful or contumacious disobedience on the part of the respondents, their justification tendered may be disputed by the applicant but yet cannot be treated as action in

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flagrant disregard to the directions of the Court. In the result and having regard to the reasons recorded above, we do not find any wilful or contumacious disobedience on the part of the respondents, Contempt Petition is dismissed. Notices issued to the respondents are discharged. However, it goes without saying that the applicant is at liberty to assail his grievance in an appropriate proceedings in accordance with law.

12. In view of the aforesaid directions, MA 1230/2002 is also rejected.

S. Raju  
(Shanker Raju)  
Member(J)

V.K. Majotra  
(V.K. Majotra)  
Member(A)

/rao/