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42
22

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

CP 74/2003 in
O.A.No 977/2003

Date of Decision 14.5.2003

Ms. N.M. Singh ... Applicant

Sh. V.K. Shali, Sr. Counsel ... Advocate for the Applicant

VERSUS

UOI & Ors. ... Respondents

Shri Rajeev Sharma, senior
counsel with Shri Vivek
Advocates for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

43
22

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

CP (CIVIL) NO. 74/2003

in

ORIGINAL APPLICATION NO. 977/2000

New Delhi this the 14th day of May, 2003

**Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri V.K. Majotra, Member (A).**

Ms. N.M. Singh,
Sr. TV News Correspondent,
presently resident of
1490, Outram Lines,
Kingsway Camp, Delhi-9. ... Petitioner.

(By Advocate Shri V.K. Shali, senior counsel)

Versus

1. Shri Pawan Chopra, IAS,
Secretary, Ministry of
Information and Broadcasting,
Shastri Bhawan, New Delhi.
2. Shri K.S. Sarma, IAS,
Chief Executive Officer,
Prasar Bharti Broadcasting
Corporation of India;
PTI, Parliament Street,
New Delhi-110001.
3. Dr. S.V. Qureshi,
Director General, Doordarshan
Mandi House,
New Delhi-110001. ... Respondents.

(By Advocate Shri Rajeev Sharma, senior counsel with
Shri Vivek).

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

CP (Civil) 74/2003 has been filed by the
applicant in OA 977/2000, alleging that the respondents
have wilfully and contumaciously disobeyed the Tribunal's
order dated 12.11.2002. This has been controverted by
the respondents. We have heard Shri V.K. Shali, learned
senior counsel for the petitioner and Shri Rajeev Sharma,

44

learned senior counsel for the respondents in the contempt petition and considered the pleadings and submissions.

2. The relevant portion of Tribunal's order dated 12.11.2002 reads as follows:

"(i) The respondents are directed to grant the salary for the period in question i.e. from 25.7.1997 to 31.5.2000 as admissible to the applicant in accordance with the relevant rules and instructions. The applicant to submit a detail representation duly supported by relevant documents within two weeks to facilitate the respondents to take the decision in the matter. She may also be granted a personal hearing, if so requested, before a final decision is taken in the matter by the competent authority;

(ii) Necessary action shall be taken by the respondents within a period of two months from the date of receipt of the aforesaid representation".

3. According to Shri V.K. Shali, learned senior counsel, even though more than two months have elapsed after the petitioner had made the representation, no order regarding release of her salary has been passed by the respondents till date. He has very vehemently submitted that the respondents are taking false and frivolous objections ^{undertaking} ~~thereunder~~ to contumaciously flouting the Tribunal's orders. He has submitted that the letter issued by the respondents dated 26.2.2003 is nothing but disobedience and refusal on the part of the respondents to implement the judicial order as they have no authority whatsoever to call for an undertaking/affidavit in order to get her salary released for the relevant period. He has also referred to the affidavit signed by the petitioner which was filed on 22.4.2003, in which she has

25
BJS

stated, inter alia, that "I state that after 25th July, 1997, I have not been employed anywhere else till date except in Doordarshan". Learned senior counsel has submitted that beyond this affidavit, the petitioner was not required to give any further affidavit in order to get her salary released for the period she has been continuing as a Government servant and there are no such Rules for this purpose. He has also very vehemently submitted that the respondents are bent on harassing the petitioner and the letter issued by the respondents dated 9.1.2003 is contrary to the Tribunal's orders, wherein an affidavit/undertaking has been asked for, which has been reiterated in the later letter dated 26.2.2003. He has submitted that even a Government servant who is suspended is given subsistence allowance ^{and PS} _L there is no reason why a person like the applicant, who is a Government servant, should not be paid her salary and allowances for the period in question which is her right under the relevant Rules. He has referred to the averments made by the petitioner in the rejoinder, in which it has been stated that no such undertaking or information has been obtained from any other employee and on the contrary she has stated that as and when the work was assigned to her, the same was being performed and after 25.7.1997, she has never taken any private employment as is sought to be alleged by the respondents.

4. Shri Rajeev Sharma, learned senior counsel for the respondents has submitted that the action taken by the respondents is not in any way contrary to the directions of the Tribunal contained in the order dated 12.11.2002 or against the Rules. He has submitted that

PS

26/4/03

the facts in the present case are somewhat extraordinary and the respondents have tried to fully implement the Tribunal's order in accordance with the relevant Rules. He has submitted that the applicant had made a representation dated 19.11.2002 in accordance with the directions of the Tribunal. By a subsequent application dated 27.11.2002, she also sought a personal hearing. He has submitted that in terms of the directions of the Tribunal "to grant the salary for the period in question i.e. from 25.7.1997 to 31.5.2000 as admissible to the petitioner in accordance with the relevant rules and instructions", the respondents have taken the necessary steps for payment of her salary for the relevant period. He has submitted that as regards the payment of the salary for the period in question, as mentioned in the letter dated 26.2.2003, as soon as the applicant furnishes the requisite certificate, the same will be released to her. Learned senior counsel has also made submissions that some of the letters sent to the petitioner's home address have been returned and she has only given the address of her counsel, which he has submitted has also caused some difficulties to the respondents and he prays that the applicant may be asked to furnish her own address so that necessary communications may be sent to her at that address. He has submitted that she has been given a personal hearing, as requested by her by the Deputy Director General (Admn.) on 27.1.2003. At her request, the respondents have also taken a sympathetic view to defer recovery of the outstanding dues on the Government quarter earlier allotted to her, in terms of an order passed by the Directorate of Estates.

27/47

5. Learned senior counsel for the respondents has relied on the provisions of Fundamental Rule (FR) 17 and has submitted that because of the extraordinary circumstances of the case, the Department was acting cautiously, for which they cannot be penalised. He has stressed on the fact that the Tribunal's order has also directed the respondents to grant the petitioner her salary for the period in question as admissible in accordance with the relevant rules and instructions. An objection has been raised by Shri V.K. Shalli, learned senior counsel that FR 17 applies only to tenure posts and not to the applicant who holds a permanent Government post. Having regard to the provisions of FR 17 read with the proviso to that Rule, it cannot be held that these provisions are not applicable to the petitioner as these Rules apply to all Government servants whose pay is debitable to Civil Estimates, as provided in FR 2. This ground taken by the learned senior counsel for the petitioner is accordingly rejected.

6. Learned senior counsel for the respondents has relied on the judgements of the Hon'ble Supreme Court in **Anil Ratan Sarkar and Ors. Vs. Hirak Ghosh & Ors.** (2002 (4) SCC 21) and **Suresh Chandra Poddar Vs. Dhani Ram & Ors.** (2002 (1) SCC 766). He has submitted that following the judgement of the Hon'ble Supreme Court in **Anil Ratan Sarkar's** case (supra), the jurisdiction of the Courts under the provisions of the Contempt of Courts Act, 1971 should be exercised cautiously and in the larger interest of society and only after the court is satisfied beyond doubt as to the guilt of the accused as

20/48

well as the bona fides of the complainant. Similarly, following the judgement of the Hon'ble Supreme Court in **Suresh Chandra Poddar's** case (supra), he has submitted that in the circumstances of the present case, the respondents are not in any way trying to disobey the Tribunal's orders but have acted in the manner they have done in the facts and circumstances of the case and as directed by the Tribunal, in order to pay her salary for the relevant period, as admissible in accordance with the relevant rules and instructions. He has, therefore, prayed that the contempt petition may be dismissed.

7. In **Anil Ratan Sarkar's** case (supra), it has been held as follows:

"14. Similar is the situation in **Mrityunjay Das v. Sayed Hasibur Rahaman** (2 (2001) 3 SCC 739) and as such we need not dilate thereon further as to the burden and standard of proof vis-a-vis the Contempt of Courts Act - suffice it to record that powers under the Act should be exercised with utmost care and caution and that too rather sparingly and in the larger interest of the society and for proper administration of the justice delivery system in the country. Exercise of power within the meaning of the Act of 1971 shall thus be a rarity and that too in a matter on which there exists no doubt as regards the initiation of the action being bona fide.

15. It may also be noticed at this juncture that mere disobedience of an order may not be sufficient to amount to a "civil contempt" within the meaning of Section 2 (b) of the Act of 1971 - the element of willingness is an indispensable requirement to bring home the charge within the meaning the Act and lastly, in the event two interpretations are possible and the action of the alleged contemnor pertains to one such interpretation - the act or acts cannot be ascribed to be otherwise contumacious in nature. A doubt in the matter as regards the wilful nature of the conduct if raised, question of success in a contempt petition would not arise".

Yours

8. In the facts and circumstances of the case and having regard to the Tribunal's order dated 12.11.2002 in OA 977 of 2000, keeping in view also the aforesaid judgements of the Hon'ble Supreme Court as to the exercise of powers of a Court under the provisions of the Contempt of Courts Act, we are of the considered view that the respondents cannot be punished for contumacious disobedience of the orders. As pointed out by the Hon'ble Supreme Court in **Suresh Chandra Poddar's** case (supra), "the contempt jurisdiction is not to be exercised casually but only sparingly and in very deserving cases". In the present case, in compliance of the Tribunal's aforesaid order, it is seen that the respondents have granted personal hearing to the petitioner as requested by her before taking a final decision in the matter. The directions of the Tribunal were to pay the petitioner her salary for the period from 25.7.1997 to 31.5.2000, as admissible to her in accordance with the relevant rules and instructions. As mentioned above, we are unable to agree with the contentions of Shri V.K. Shali, learned senior counsel that the provisions of FR 17 do not apply to the payment of salary to the Government servants. His very emotional submissions that even a suspended Government servant is allowed subsistence allowance whereas the petitioner who has all along been a Government servant has not been paid her pay and allowances for the period, is not relevant for the purposes of deciding the matter in the contempt petition. The respondents, while taking steps to pay her salary for the period, as ordered by the Tribunal have asked her to furnish an affidavit which is in not in any way contumacious or wilful disobedience of the Tribunal's

order warranting punishment under the provisions of Section 17 of the Administrative Tribunals Act, 1985 read with the provisions of the Contempt of Courts Act, 1971.

As rightly pointed out by Shri Rajeev Sharma, learned senior counsel, the respondents have requested her to furnish an affidavit/undertaking that she attended office/Performed duties as per the service rules during the period in question which is in the circumstances of the case not de hors the rules, including FR 17. It is relevant to note that learned senior counsel for the petitioner has submitted that the petitioner is not willing to give any affidavit beyond what she has already furnished to the Tribunal dated 22.4.2003 which is to the effect that "...after 25th July, 1997, I have not been employed anywhere else till date except in Doordarshan". We also note that this affidavit has been given by the petitioner giving Chamber No. 423, High Court of Delhi, New Delhi as her address, which during the ~~hearing~~ ^{8/} was mentioned as the office address of the learned senior counsel for the petitioner. In the circumstances, we see no reason why the petitioner should not furnish her residential address to the respondents, as submitted by the learned senior counsel for respondents, to facilitate communications between them.

9. In the context of the facts and circumstances of the present case, we find that there is no contumacious or wilful disobedience on the part of the respondents in the steps they have taken towards the Tribunal's order dated 12.11.2000, which warrants any further action being taken against them under the provisions of Section 17 of the Administrative Tribunals

Yours,

(B) SJ

Act, 1985 read with the provisions of the Contempt of Courts Act. Accordingly, CP 74/2003 is dismissed. Notices to the alleged contemners are discharged. File be consigned to the record room.

V.K. Majotra

(V.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'