

Reserved on
03.02.2021

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD

(This the 08th Day of February, 2021)

Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)
Hon'ble Mr. Devendra Chaudhry, Member (A)

Contempt Application No.330/00020/2019
(Arising out of Original Application No.330/74/2018)

Arvind Kumar Saini, aged about 25 years, S/o Late Keshav
Chandra Saini, R/o Quarter No.T/10B, Railway Colony, Kasganj.

..... **Applicant**

By Advocates: **Shri Anil Kumar Singh**
 Shri M.K. Upadhyay

Versus

1. Dinesh Kumar Singh, Divisional Railway Manager, North East
 Railway, Izzatnagar.
2. Dileep Kumar Verma, Retd. Divisional Operating Manager
 (General), North East Railway, Izzatnagar.

..... **Respondent**

By Advocate: **Shri Amit Kumar Rai**

O R D E R

Delivered by Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

The present contempt petition has been filed for non
compliance of the order dated 30.10.2018 passed by this Tribunal in
Original Application No.74 of 2018 (Anil Kumar Saini vs. Union of
India & Ors.)

2. We have heard Shri Anil Kumar Singh along with Shri M.K. Upadhyay, learned counsel for the petitioner and Shri Amit Kumar Rai, learned counsel for the respondents/contemnor. Perused the records.

3. For a ready reference, the aforesaid order dated 30.10.2018 is reproduced below:-

“Open Court

***CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD***

Allahabad, this the 30th day of October, 2018

Present :

*Hon’ble Mr. Gokul Chandra Pati, Member-A
Hon’ble Mr. Rakesh Sagar Jain, Member-J*

Original Application No.330/00074/2018

*Arvind Kumar Saini, Aged about 25 years, S/o Late
Keshav Chandra Saini, R/o Quarter No.T/10B, Railway
Colony, Kasganj. Presently posted as Gateman at
railway station, Sonai (Mathura).*

.....Applicant.

By Advocate – Shri Anil Kumar Singh

V E R S U S

- 1. Union of India, through the Secretary, Ministry
of Railway, New Delhi.*
- 2. General Manager, North East Railway,
Gorakhpur.*
- 3. The Divisional Railway Manager, North East
Railway, Izzatnagar.*
- 4. Station Superintendent, Station, Sonai
(Mathura).*
- 5. Dileep Kumar Verma, Divisional Operating
Manager (General), North East Railway,
Izzatnagar.*

.....Respondents.

By Advocate : Shri Amit Kumar Rai

ORDER

By Hon'ble Mr. Gokul Chandra Pati, Member-A :

Learned counsel for the applicant submitted that the applicant proceeded to the place of transfer i.e. to Shahjahanpur in pursuance of the transfer order dated 11.05.2017, after receiving the copy of the order dated 05.09.2018 passed by this Tribunal and then the respondents have provided a copy of the transfer order to the applicant on 10.09.2018. Learned counsel for the applicant also submitted that when the applicant went to join at Shahjahanpur, he found nobody there, due to which he could not submit his joining report. He further submitted that the Station was closed although conversion to broad gauge line was going on.

2. Learned counsel for the respondents, on the other hand, submitted that the applicant has failed to join in Shahjahanpur in compliance of the transfer order.

3. In view of the submissions of the learned counsels for the parties, since the applicant has accepted the transfer order dated 11.05.2017, no useful purpose will be served to keep this OA pending at this stage. Accordingly, the OA is disposed of with direction to the respondents to ensure joining of the applicant at the appropriate place of his duty. For this purpose, the applicant is directed to report before Respondent No.3, who is superior to Station Superintendent Shahjahanpur, with a detailed representation mentioning the reasons for not joining at Shahjahanpur. If the applicant reports before Respondent No.3 within 10 days from receipt of the copy of this order along with representation as stated above, then the Respondent No.3 shall pass necessary order regarding the name of the officer and his official designation, to whom the applicant shall report for duty. The respondent No.3 shall issue such order in writing and he can modify the applicant's place of posting, if he deems it appropriate, after obtaining approval of the competent authority. Copy of the said order shall be communicated to the applicant preferably on the day on which the applicant reports to the Respondent No.3 in pursuance of this order.

4. It is made clear that till compliance of the above directions and issue of order by Respondent No.3 as stated above, the interim order granted to the applicant shall continue.

5. The OA is disposed of accordingly. No order as to costs.

Member-J

Member-A"

4. As per the averments made in the contempt petition, the Original Application No.00074/2018 was filed by the petitioner/applicant against the oral transfer order dated 11.05.2017, whereby the petitioner had been transferred from Sonai to Shahjahanpur. This Tribunal, after hearing learned counsel for the parties, passed the order quoted above (Annexure A-1) and disposed of the O.A. accordingly.

5. It is further averred in the contempt petition that after receiving the certified copy of the above cited order dated 30.10.2018, which was made available to the petitioner in the first week of November, 2018, the petitioner sent it along with his detailed representation by registered post to the respondents. The receipt of the registered letter and copy of the hand written representation dated 12.11.18, are annexed by the petitioner collectively as Annexure-3. The date on the receipt of registry is also 12.11.2018. In the representation, he has stated that he had gone to the transferred place Shahjahanpur on 6.10.18, but neither any officer nor any official was found present on duty at the Railway station. Even the offices were found locked. The nearby residents informed that the station has been closed for 2 years. The in-laws of the petitioner reached at the station, they committed mar-peeet with the petitioner and threatened him of dire consequences, if he

tried to do his duty. The petitioner sent the report of the incident to SP Shahjahanpur by registered post.

6. The grievance of the petitioner is that despite receiving of the above representation, sent by registered post, nothing was done by the respondents in compliance of the order dated 30.10.2018 of this Tribunal.

7. It is further stated in the contempt petition that respondent No.2 is unnecessarily harassing the petitioner. Being a railway employee, the petitioner has been allotted a room in Kasganj, but due to pressure of respondent No.2, the petitioner has to reside in a rented quarter. The wife and mother-in-law of the petitioner are residing in the official house allotted by the Railways and petitioner has been forcefully evicted by them due to some dispute of his wife with him.

8. On the aforesaid grounds, it has been prayed that as the respondents have committed wilful and gross contempt of this Tribunal, they are liable to be punished for disobeying the order.

9. Learned counsel for the respondents/contemnor has filed counter reply, first seeking the unconditional apology by stating that the respondents could not dare to disobey the orders of this Hon'ble Tribunal even in their dreams. It has been submitted that

the respondents have not committed any wilful disobedience of the order of this Tribunal. While drawing our attention to the operative portion of the order dated 30.10.2018, already quoted above, it is contended by learned counsel for the respondent that on a perusal of the operative portion of the aforementioned order, it becomes crystal clear that this order consists of two parts, in which first part was to be performed by the petitioner and after compliance of 1st part of the order, the liability of the respondents was to arise to comply the 2nd part of the order. By the 1st part, the petitioner was directed by this Tribunal to report before the respondent No.3 namely, ***the Divisional Railway Manager, North East Railway, Izzatnagar***, within a period of 10 days from the receipt of the copy of the order, along with a detailed representation and thereafter, second part was to be performed by the respondent No.3 by passing necessary order with regard to the name of the officer with his official designation before whom the applicant shall report for duty. It was also directed that respondent No.3 shall issue such order in writing and he can also modify the applicant's place of posting, if he deems it fit and appropriate, after obtaining approval of the Competent Authority. The respondents were further directed that the copy of the order so passed shall be communicated to the petitioner preferably on the date on which he reports to the respondent No.3, in pursuance of the order.

10. Learned counsel for the respondents has vehemently contended that the first part of the order, which the petitioner himself was obliged to perform, was never performed by the petitioner. As per his own submissions made in the contempt petition, it becomes crystal clear that he never appeared before the respondent No.3 at Izzatnagar, Bareilly and only sent a representation by the registered post on 12.11.2018. It is further contended that as per office report, the aforesaid letter was never received in the office of the respondents, due to which the respondents could not comply the order of this Tribunal.

11. Learned counsel for the respondents has further contended that the applicant never joined his place of posting and in fact, he was enjoying and misusing the interim protection granted by this Tribunal to him in Original Application No.74 of 2018, filed by him with prayer to quash the transfer order dated 11.05.2017 and after obtaining the interim stay of the transfer order, he did nothing until the OA was finally disposed off on 30.10.18.

12. It is next contended that although, the petitioner in his representation dated 12.11.2018 (Annexure A-3 to the OA) has stated that on 06.10.2018 he had gone to join the duty at Shahjahanpur but as no one was found present there and even all the rooms were found locked, he could not join at Shahjahanpur i.e. his transferred place of posting, however, he has not filed any proof

in support of this contention that no railway employee was present at Shahjahanpur Station at the date and time when he went there to join his duty.

13. To the contrary, the respondents have filed several proofs to show that all the employees were on duty and were working in their rooms at that time. In this regard, copy of the Attendance Register dated 06.10.2018 pertaining to attendance of employees of Shahjahanpur Station, issued by Station Superintendent on 11.03.2019 and entire attendance sheet of month of October, 2018 is being annexed as Annexure CR-4 with the counter reply.

14. It is further contended that on 06.10.2018, Station was opened at 06 AM and it was closed at 06 PM. In this regard, relevant documents pertaining to opening and closing of the Station have been annexed as Annexure CR-5 to the counter reply. The respondents have also filed several photographs of various officers/official, sitting in their offices as well as of booking window showing the employee sitting on duty. All these photographs have been collectively annexed as Annexure CR-6 to the counter reply.

15. The allegation made in the representation of the applicant that his wife and her relatives met him at the Station and had beaten him, is also denied by the respondents by stating that the Station Superintendent had sought information in this regard from

G.R.P., Shahjahanpur. The report of G.R.P., Shahjahanpur has been annexed as Annexure CR-7 with the counter reply. It is lastly, contended that the respondent No.2 against whom, personal allegations have been made by the petitioner in Para-5 of the Contempt Petition, has been wrongly impleaded in the contempt petition, because he was respondent no.5 in the OA and as per the direction issued by this Tribunal, the order was to be complied with by respondent no. 3 that too after the compliance of 1st part of the order by the petitioner himself. Moreover, respondent No.2 is a retired employee and is not in a position to pressurize the entire department.

16. On the aforesaid grounds, it has been prayed that as the respondents have not disobeyed the order of this Tribunal, the contempt proceedings are liable to be closed and notices issued to the respondents deserve to be discharged.

17. Learned counsel for the petitioner has not filed any rejoinder reply against the counter reply. Therefore, the aforesaid averments made in the counter reply are uncontroverted.

18. Having heard learned counsel for both the parties and having gone through the record, we are of the firm view that the arguments advanced by learned counsel for the respondents have substance. The order dated 30.10.2018 passed in OA No.74 of 2018, in respect

of which the instant contempt proceedings are pending, clearly shows that the order was in two parts, to be complied with by both the parties. In the 1st part, the applicant was directed to report before the respondent No.3, the Divisional Railway Manager, North East Railway, Izzatnagar, who is superior to Station Superintendent, Shahjahanpur, with a detailed representation mentioning the reasons for not joining at Shahjahanpur. Thereafter, it was directed that if the applicant reports before the respondent No.3 within 10 days from the receipt of the copy of the order along with representation, then respondent No.3 was required to pass necessary orders on his representation.

19. It is noteworthy that in the entire contempt petition, there is not even a whisper as to whether the petitioner had ever gone to report before the respondent No.3 within the time of 10 days from the receipt of the copy of the order? According to his own averments, the certified copy of the judgment dated 30.10.2018 was made available to the petitioner in the 1st week of November, 2018 and he sent it to Respondent no.3 alongwith his representation by means of a registered post. The respondents were required to comply the direction only thereafter. As the petitioner himself has failed to comply his part of the order, the respondents cannot be blamed for non compliance of the order of this Tribunal.

20. In view of the above, the contempt petition being meritless, is liable to be dismissed and is accordingly dismissed. Notices issued to the respondents are hereby discharged.

(Devendra Chaudhry)
Member-A

(Justice Vijay Lakshmi)
Member-J

Sushil