

(35)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

CCP No. 154/88 in
O.A. 1192/86.

Dated: 24th October, 1988.

Shri Lakshman Singh Petitioner.

v/s.

Union of India & Another Respondents.

CORAM: Hon'ble Mr. P.K. Kartha, Vice Chairman.
Hon'ble Mr. Kaushal Kumar, Member (A).

For the Petitioner Shri Ujjal Singh, Counsel.

For the Respondents Shri M.L. Verma, Counsel.

(Order of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, Member)

In this CCP (No. 154/88), the petitioner has prayed for action against Respondents 1 to 3 for flouting the order of the Tribunal dated 2.9.1988 passed in M.P. No. 1431/88 in O.A. 1192/86. In the main application the applicant has questioned his pre-mature retirement from service. The direction given on 2.9.1988 which is the subject matter of this Contempt Petition reads as follows: -

"Status-quo as regards government accommodation, may be maintained until further orders but subject to the applicant's paying the licence fee in accordance with the relevant rules and orders. M.P. is disposed of on the above lines."

2. Earlier a Bench of this Tribunal on 6.5.1988 had passed the following order while disposing of a Misc.

Petition: -

"Heard the learned counsel for both the parties. It is admitted that in compliance of our order dated 21.8.87 pension, gratuity etc. have been released by the respondents within the time prescribed. Accordingly, there

M. Kartha

is no further justification in allowing the applicant to retain Government accommodation beyond the period admissible under the rules. The applicant had retired in January, 1987 and has been in occupation of the Government accommodation for about 16 months. The learned counsel for the applicant prays that the applicant should be given further extension to retain Government accommodation for 6 months. This to us appears to be a tall order. He should vacate the Government accommodation within a period of 2 months from today subject to his paying rent in accordance with the relevant rules up to date.

MP is disposed of.*

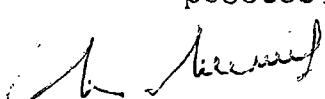
3. In terms of the above order, the petitioner who had retired in January 1987 was allowed to retain the Government accommodation for a period of two months from the date the order dated 6.5.1988 was passed. Against this interlocutory order the applicant filed a SLP in the Supreme Court which was dismissed as withdrawn.

4. Although it is stated in the counter-affidavit to the contempt petition that a copy of the Misc. Petition was not served on the Respondents, the record shows that this Misc. Petition (No. 1431/88) which was filed on 26.7.1988 was served on the learned counsel for the Respondents (Shri M.L. Verma). However, none from the Respondents side appeared on 2.9.1988 when the order regarding status quo was passed. This order was served on Respondent No.1 (Secretary, Ministry of Defence) on 14.9.1988. As regards Respondent No.2, the order appears to have been diarised or received in the office of

M. Verma

Respondent No.2 on 19.9.1988. As per record produced for our perusal, the service of this order was not effected 'dasti' by the petitioner on Respondent No.2. Although the learned counsel for the petitioner states that he had informed Shri M.L. Verma, learned counsel for the Respondents verbally regarding the order passed on 2.9.1988, this fact is denied in the counter-affidavit. When this matter came up earlier before us on 30.9.1988 it was pointed out that Respondent No.3 in the CCP was not a party to the proceedings in OA 1192/86 and that he was not aware of the directions given by the Tribunal on 2.9.1988. Accordingly the notice of contempt to Respondent No.3 was discharged vide our order dated 30.9.1988. As regards Respondents 1 and 2, a direction was given on 30.9.1988 that "possession of the quarter from which the petitioner was evicted shall be restored to him in case the same has not already been allotted to and occupied by any other person. This order shall be complied with forthwith and the position reported on 10.10.1988."

5. The question that arises for our consideration is whether there has been any wilful defiance or non-compliance of the direction given by the Tribunal on 2.9.1988 to maintain the status quo as regards the Government accommodation. Obviously, the order which was passed on 2.9.1988 was not served on Respondent No.2 before 19.9.1988 and the petitioner himself admits in the petition that he served that order on Respondent No.2 only on 19.9.1988 when he was being evicted from the quarter occupied by him. It is also stated in the counter reply to the CCP that "The applicant obtained the exparte order on 2.9.88 but he did not take trouble to have the service of that order till "Afternoon of 19.9.88" till the "local administration" of Respondent No.3 took possession of the Quarter". Respondent No.1 (Secretary



to the Government of India, Ministry of Defence) was a ~~pre~~forma party in this case. Respondent No.1, as such, cannot be held to be guilty of any contempt. As regards Respondent No.2 the service having been effected only on 19.9.1988, the said officer cannot be considered to have flouted the order since action for eviction was taken on 19.9.1988 by an official who was not made a party in the M.P.

6. Learned counsel for the petitioner has relied upon the following two rulings in support of his contentions.

7. In The Aligarh Municipal Board and others v. Ekka Tonga Mazdoor Union and others (1970 (3) SCC 98), it was held that "the omission to annex a certified copy of the stay order is not material. The correctness of the order was accepted by the superior officers and the junior officers, herein applicants, cannot take shelter behind such a plea. Also in order to justify action for Contempt of Court for breach of a prohibitive order it is not necessary that the order should have been officially served on the party against whom it is granted if it is proved that he had notice of the order aliunde and he knew that it was intended to be enforced. Official communication is not a condition precedent, provided there is no valid reason to doubt the authenticity of the order conveyed."

However, the Court further observed in paragraph 8 of its judgement that:

".... In order to bring home a charge of contempt of Court for disobeying orders of Courts those who assert that the alleged contemners had knowledge of the order must prove this fact beyond reasonable doubt. As observed earlier it is of course not necessary to prove formal

M. A. Khan

service of the order by official routine and knowledge of the exact order aliunde would suffice. In case of doubt, however, benefit ought to go to the person charged."

8. There is no averment on the part of the petitioner in the CCP that a copy of the order which was passed on 2.9.1988 had been served on Respondent No.2 before 19.9.1988 but what is averred in the contempt petition is that a copy of the said order was shown to Respondent No.3 who was not a party to the earlier proceedings. This is stated to have been done at the time when the petitioner was actually being evicted from the Government accommodation. It is clarified by the Respondents in the counter-affidavit that this order was shown to Respondent No.3 only when he took possession of the quarter.

9. Another ruling relied upon by the learned counsel for the applicant is of the Delhi High Court in Kedar Nath v. Municipal Corporation of Delhi etc. (1969 Cri L.J. 1571) wherein it was held:

"An injunction directed to a Corporation under O 89, R.5 Civil P.C. is binding not only on the Corporation itself but also on all members and officers of the Corporation whose personal action it seeks to restrain. The fact of omission to take full note of injunction of the court and that of a proposal to file an appeal therefrom is no justification for violating the injunction order. It is not even an appropriate mitigating circumstance. Under the circumstances in issuing demand notices for water tax in violation of injunction order of Court, the Corporation must be deemed to have committed a serious contempt of court and is guilty of the same."

M. Murali

(Mo)

The Delhi High Court further observed in para 6 of the judgement as under: -

"We are fully conscious of the caution with which we have to approach cases for committal for contempt of Court. It is of course axiomatic that it is a weapon to be used sparingly and always with reference to the interests of the administration of justice."

10. We do not think that the rulings relied upon by the learned counsel for the petitioner advance the case of the petitioner. We are satisfied that there has been no wilful disobedience of the order passed by this Tribunal on 2.9.1988. The CCP is accordingly dismissed and the notice of contempt is discharged.


(KAUSHAL KUMAR)

MEMBER (A)


(P.K. KARTHA)

VICE CHAIRMAN

24.10.88.