

30

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

M.P. NO. 2374/93 &
M.P. NO. 2250/93 in
C.C.P. NO. 265/93 in
O.A. NO. 436/96

DECIDED ON : 17.09.1993

SHIV NANDAN

...

PETITIONER

VS.

DR. V. K. ARORA

...

RESPONDENT

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Petitioner through Shri G. D. Gupta, Counsel

Respondent Through Shri K. C. Mittal, Counsel

O R D E R (ORAL)

(BY HON'BLE MR. JUSTICE V. S. MALIMATH)

CCP 265/93 has been filed by Shri Shiv Nandan complaining that the respondent has acted in contumacious violation of the directions issued by the Tribunal in its judgment rendered in OA 436/86 on 2.7.1992. The order made against the petitioner removing him from service in the disciplinary proceedings conducted against him as also the appellate order affirming the same were set aside and a direction was issued to the disciplinary authority to initiate a disciplinary inquiry within a period of four months from the date of receipt of a copy of the judgment. Initiation of disciplinary proceedings in this case was made on 27.4.1993 nearly nine months after the pronouncement of the judgment. It is, therefore, that action is sought to be initiated under the Contempt of Courts Act.

2. After issue of notice in the contempt of court case, the respondent has come forward with an application (MP-2250/93) for extension of time till the date of the actual initiation of disciplinary proceedings against the petitioner. This application was filed in the Tribunal on 18.8.1993. The petitioner has thereafter filed MP 2374/93 for an interim direction restraining the respondent from proceeding with the inquiry which the respondent has initiated on 27.4.1993. It is, therefore, that we are required to consider the CCP as well as the 2 MPs.

3. We consider it appropriate to examine the application for extension of time in the first instance. The explanation offered for not being in a position to initiate disciplinary proceedings within a period of four months from the date of receipt of a copy of the judgment is as follows.

4. It is stated that the judgment of the Tribunal was rendered ex-parte against the respondent. That appears to be so. The judgment though rendered on 2.7.1992 it is stated that the copy of the same was received by the respondent on 27.7.1992. It is further pointed out that they filed three MPs No. 3020, 3021 & 3022/92 in which inter alia a prayer was made for setting aside the ex-parte judgment, for condonation of delay and for reviewing the judgment of the Tribunal. All the three MPs were dismissed on 3.12.1992 and copy of that order was received by the respondents on 22.1.1993. It is

stated that immediately thereafter the opinion of the Addl. Solicitor General for filing an appeal before the Supreme Court was sought. Though the information as to when the opinion was received has not been furnished in the petition, Shri Mittal, learned counsel appearing for the respondent on instructions from his client, submitted that the opinion was despatched by the Addl. Solicitor General on 16.3.1993 and the same was actually received by the respondent on 22.3.1993. Obviously the Addl. Solicitor General did not favour filing of any SLP. It is, therefore, that steps were taken to initiate disciplinary proceedings on 27.4.1993. It was explained by the learned counsel for the respondent that immediately after all the legal steps were taken for agitating the matter as a reasonable party, steps were taken to initiate disciplinary proceedings. Looked at from that point of view, we cannot say that there has been unreasonable delay in initiating the disciplinary proceedings from 22.3.1993 till 27.4.1993. Until 22.3.1993 the respondent was pursuing legal remedies by filing MPs and seeking legal advice for proceeding further by way of appeal before the Supreme Court. In this background, it is not possible to take ^{the} view that the respondent has acquiesced or that he was complacent in not pursuing legal action in accordance with law. The respondent has admittedly pursued whatever legal remedies were available to him in accordance with law. The only mistake the respondent has obviously committed is ⁱⁿ not promptly making an application for extension of time for initiating disciplinary proceedings particularly when a

period of four months was stipulated in the judgment of the Tribunal. It is in this background that Shri Gupta, learned counsel for the petitioner submitted that the conduct of the respondent is not bonafide in seeking a belated extension of time the application having been made for the first time after the respondent was served with a notice in the contempt of court case. Merely because action is initiated for filing an application for extension of time after service of notice in the contempt of court case that by itself is not sufficient to draw the inference that the conduct of the respondent lacks bonafide.

5. Another point sought to be made out by the learned counsel for the petitioner that no regret whatsoever has been expressed in any of the affidavits filed either in answer to the contempt of court petition or in the application for extension of time by the respondent. That is obviously so. Realising this deficiency, Shri Mittal, learned counsel for the respondent promptly submitted that it is an inadvertant mistake and that the respondent has the highest regards for the Tribunal and that it cannot even remotely be suggested that the mistake on the part of the respondent to make a proper averment was deliberate or out of disregard for the Tribunal. Shri Mittal, learned counsel for the respondents, offered unconditional apology for the delay and for not making a proper averment in the affidavits filed by the respondents. In these circumstances, we consider it just and proper to accept the apology offered

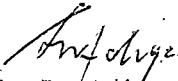
39
(C)


by the learned counsel for the respondent on behalf of the respondent for delay in initiating the disciplinary proceedings and not responding to the contempt of court proceedings in a proper manner. But having regard to the totality of the circumstances to be examined, we are satisfied that the conduct of the respondent is bonafide. We are also satisfied that the respondent has acted in the best interest of the institution in taking appropriate steps which were available to them in accordance with law. The delay also cannot be regarded as so unreasonable as to disturb our conscience. We are satisfied that the conduct of the respondent is bonafide and reasonable and, therefore, it is not a fit case for taking action under the Contempt of Courts Act. On the contrary it is a fit case in which we should accede to the request for extending the time to initiate disciplinary proceedings. We do so accordingly.

6. Before concluding, we should say that if the petitioner has not availed of the opportunity to secure proper assistance because he bonafide felt that the respondent has lost right to initiate disciplinary proceedings, the respondents should now give a fresh opportunity to the petitioner to take such assistance within a reasonable time.

7. Subject to these observations, the contempt of court proceedings are dropped and the time for initiating

disciplinary proceedings stands extended till the date the initiation was actually made in this case. Consequently, the M.P. to restrain the holding of the disciplinary proceedings stands rejected.


(S. R. Adige)
Member (A)


(V. S. Malimath)
Chairman

as
170993