

31

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

CCP No. 29/89 in
O.A. No. 244/1987 198
T.A. No.

DATE OF DECISION 17.5.1989

Shri Ravinder Kumar Walia Petitioner

Shri P.P. Khurana Advocate for the Petitioner(s)

Versus

General Manager (P) Respondent
Northern Railway, New Delhi

Shri O.N. Moolri Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji

The Hon'ble Mr. P. Srinivasan, Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? NO
4. Whether to be circulated to other Benches? ✓


(Amitav Banerji)
Chairman

32

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

CCP No.29/89 in
OA No. 244/1987.

Shri Ravinder Kumar Walia Applicant.

Vs.

General Manager (P), Northern Railway .. Respondent.
New Delhi.

For the Applicant ... Shri P.P.Khurana, counsel.

For the respondent ... Shri O.N.Moolri, counsel.

(Orders of the Bench delivered by Hon'ble
Mr.Justice Amitav Banerji, Chairman).

The Applicant is the Petitioner in the Contempt Petition. He has prayed that the respondent has disobeyed the orders of the Tribunal dated 8.6.1988 passed in OA 244/87.

A Bench of the Tribunal held that the lien of the Applicant has not been established in Ferozepur Division at all and the order passed by the General Manager (P) dated 7.10.1986 (Annexure R-17) directing the Applicant to go back to Ferozepur Division was quashed. The Bench further directed:

"Accordingly, the applicant will be entitled to consequential reliefs following the quashing of the order of the General Manager (P) (Annexure R-17)."

The petitioner has stated that quashing of the order of 7.10.1986 (Annexure R-17) had the effect as if the impugned order did not exist. But the respondents have in gross violation of judgment again refixed the lien of the applicant in Ferozepur Division, which in fact had been quashed by the Tribunal. The second aspect

09

of the matter was that the respondents have not given any consequential benefit inasmuch as no orders for the payment of salary for the period 5.9.1986 to 31.7.1987 have so far been passed. The respondents have not cared to rectify the seniority of the applicant as a consequence to the quashing of the order dated 7.10.1986. In support of the Contempt Petition, the Applicant filed his personal affidavit duly sworn before an Oath Commissioner. A Division Bench issued notice to the respondents in the Contempt Petition.

There upon the respondents entered appearance and filed a Reply to the Contempt Petition. In the Reply, they took two preliminary objections- firstly, that the Contempt Petition was in violation of the rules and was not maintainable and secondly, the present Contempt Petition is an abuse of the process of law and is devoid of any cause of action and there was no justification ^{to claim} ~~any~~ relief by way of Contempt Petition. Furthermore, it was stated that the Petition was wholly malafide and without any reason. On the merits, it was stated that there was no violation or abuse of the orders of the Tribunal and he was posted at Ferozepur Division as per his own request and the lien granted to him at Ferozepur was in accordance with rules after proper consideration. His fixation of lien at ~~4~~ Ferozepur ^{do} not suffer from any fault and was made at the request of the Applicant. In reply to the allegation that the consequential benefits ~~arose~~ out of the quashing of

the order dated 7.10.1986 there was a complete denial.

On the other hand, it was stated that the petitioner had not disclosed as to where he was working or posted during the said period and further in any event the consequential benefits could not be considered in the present petition.

The contents of paragraph 5 of the Contempt Petition regarding allegation of wilful disobedience of the orders of the Tribunal was denied.

A rejoinder has been filed by the petitioner.

Preliminary objection No. 1 has been categorised as frivolous and devoid of substance. It was a Civil Contempt Petition and arose out of violation of the order dated 8.6.1988 passed by the Tribunal in OA 244/87. The fixation of lien at Ferozpur was no longer res-integra, in view of the judgement of the Tribunal, and is not open to be challenged any more. In reply to para 4 of the reply, it was stated that the judgement clearly postulated that the petitioner was entitled to consequential reliefs following the quashing of the order of the General Manager, Northern Railway dated 7.10.1986. The Applicant was entitled to salary and allowances for the period from 5.9.1986 to 31.7.1987. He had not been allowed to join his duties since September, 1986. It was only after the Tribunal's order that the Applicant was allowed to resume his duties. He was thus entitled to full payment of salary for the period from 5.9.1986 to 31.7.1987. Lastly it was pleaded that/
the fixation

seniority was also not done by the respondents.

Shri P.P.Khurana, learned counsel for the petitioner and Shri O.N.Moolri, learned counsel for the respondents were heard.

Shri P.P.Khurana stated that he was not pressing the point regarding fixation of lien and he was pressing only the second aspect of the matter viz. non-compliance with the order of the Tribunal regarding consequential benefits and fixation of seniority.

The order passed by the Tribunal dated 8.6.1988 is very clear. There is no ambiguity about it. There are three aspects. Firstly, the impugned order dated 7.10.1986 was quashed. Secondly, a direction was issued for fixation of lien. Thirdly, a direction was issued that the Applicant was entitled to consequential reliefs following quashing of the impugned order. The respondents-Railway was required to comply with these orders. Since the question of fixation of lien is not being pressed, the only question that remains to be considered is whether there has been a failure to comply with the direction of the Tribunal in regard to consequential benefits.

The Reply that has been filed by the respondents outright rejects the allegations made in the Contempt Petition (and which is supported by an affidavit), as frivolous and non-maintainable. The impugned order and

question of lien was being challenged in the reply. The reply was not supported by any affidavit and the reply did not indicate anywhere at all even a sentence of remorse or apology for not having complied with the order of the Tribunal in case it was found that there was a failure to comply with the order dated 7--10--1986. During the course of the argument Shri O.N.Moolri, counsel, appearing for the Railways vehemently argued to justify not having paid the salary etc., for the period from 5--9--1986 to 31--7--1987 on the plea that the petitioner had not given any information as to where he was during this period. The respondents ignore the fact that this is a Contempt Petition in which the Tribunal has issued Notice to the contemner to show cause why he should not be punished for disobeying the order of the Tribunal. The burden is squarely upon the answering respondents to show that they had a justified cause for not obeying the order of the Tribunal.

It has come to our notice in this contempt petition and in other C.C.Ps., that the respondents treat the C.C.P., as if it is just another Misc. Petition. It will, therefore, be necessary to clarify the position in regard to Contempt Proceedings before the Tribunal.

Section 30 of the Administrative Tribunals Act (hereinafter referred to as 'the Act') clearly indicates that "All proceedings before a Tribunal shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code."

Under Section 17 of the Act, the Tribunal has the power to punish for contempt. Rule 6(iv) of the Central Administrative Tribunal Contempt of Courts Rules, 1986 (in short 'the Rules') require the petition to be supported by an affidavit. The C.C.P. is to be admitted where the Bench is satisfied that the allegations made in the C.C.P., make out a prima facie case. In case a Civil Contempt, there should be a clear allegation of 'wilful disobedience'. Notice may then be issued to the alleged contemner in Form III to appear before the Tribunal in person or through an Advocate, on a date to be specified therein to show cause against such proceedings. Rule 14 requires the alleged contemner to file an objection which may be in the form of an affidavit. Rule 22 speaks of tendering of an apology by the alleged contemner and if the Tribunal accepts the apology, further proceedings are to be dropped. Rule 23 empowers the Tribunal to award costs.

The Rules require that the Contempt Petition must be supported by an affidavit. The allegations made in a Contempt Petition must be supported by an affidavit so that frivolous or false averments may be avoided. If a contempt petition is frivolous and based on vexatious allegations, it may be rejected at the Admission stage. If the C.C.P., contains false averments, the petitioner can be punished under Section 193 I.P.C. Similarly, the respondents must answer the allegations by an affidavit. This will induce both the parties to take care in drafting their affidavit. That affidavit must be sworn either before a Notary Public or before a ^{an} Oath Commissioner appointed by the High Court. There is a seat

28

of the High Court wherever the Additional Benches of the Tribunal are situated. Therefore, till such time as the Tribunal does not appoint Oath Commissioners at the various Additional Benches, it would be just and proper to have the affidavits sworn either by a Notary Public or by an Oath Commissioner appointed by the High Court.

It is settled law that if an allegation is made in an affidavit, it has to be controverted in an affidavit and not by a mere objection.

In HIMANSHU DHAR SINGH V. ADDL. REGISTRAR(1) the position was clearly stated:

"The position of affidavits is that of a statement on oath. Their importance is enhanced in proceedings like a writ where no parol evidence is recorded and if a party makes a definite allegation and the other party does not controvert it nor summons the deponent of that affidavit for cross-examination, the only conclusion at which Courts can arrive is that the allegations being uncontroverted and not challenged by cross-examination must be accepted. The view that I am taking finds support from the decision of the Supreme Court in the case of MEHTA PARIKH AND CO., V. COMMR. OF INCOME-TAX (1956(3)ITR 181: (S) AIR 1956 SC 554) and of this Court in KANPUR STEEL CO., Ltd. V. COMMISSIONER OF INCOME-TAX, 1957(32)ITR 56 (All)."

A similar view was taken by a Division Bench of Allahabad High Court in the case of JUGGI LAL V. R.J.GUPTA(2) and referring to the decision in MEHTA PARIKH & CO., V. COMMR. OF INCOME-TAX (A.I.R.1956 S.C.554) the Allahabad High Court observed

"Here also the Court below had before it a duly sworn affidavit of the pairokar of the plaintiff

(1)A.I.R.1962 Allahabad 439.
(2)A.I.R.1962 Allahabad 407.

25

in support of his application and there was no counter affidavit in traverse of the allegations contained in that affidavit. Under the circumstances it was not open to the court to disbelieve the version of the plaintiff

It is, therefore, evident that the statement of fact in an affidavit can only be controverted by a statement contained in another affidavit. It cannot be controverted by an 'Objection'. We are, therefore, of the opinion that it will be necessary to interpret the word 'may' to read as 'shall' in Rule 14 where it is said:

"file a statement of his objections, if any, which may be in the form of an affidavit."

The reply filed by the respondents does not show anywhere that there was any sentence in the Objection that there was no intention to flout or disobey the order of the Tribunal. On the contrary, the objection shows that the respondents were contending even the correctness of the order of the Tribunal in regard to the fixation of the lien. Further, in respect of the consequential benefits, the respondents were taking the position that since they did not know the whereabouts of the petitioner and further that since he had not made any application to the respondents, nothing could be done in the matter. In our opinion, the stand taken by the respondents is untenable. As far as the lien matter was concerned, respondents had no justification to challenge the order passed by the Tribunal. That matter had become final. When the Tribunal passed an order directing that the Applicant was entitled to consequential benefits, it was for the respondents to work it out. If they had not taken any action on learning about the decision in the case, they ought to have acted promptly on receiving the notice issued by the Tribunal on the Contempt Petition. They should have taken steps immediately at that stage. But nothing was done and on the contrary the stand was taken that the burden was on the petitioner to establish his claim. The stand taken by the respondents is entirely misconceived.

Sub

V.C

The Tribunal has been given power to punish the persons guilty of contempt of court and that includes any disobedience of its orders. It is necessary for the Tribunal which conducts judicial proceedings to have power to enforce its orders and the power to punish for contempt of disobeying its orders. It is a necessary adjunct of any judicial body.

It is no doubt true that Contempt of Court Petitions are filed in the Tribunal to enforce the compliance of the final orders passed by the Tribunal. It is often moved by an Applicant in whose favour an order has been passed but is not being complied with by the respondents. He then makes a C.C.P. for effective and speedy compliance of the order of the Tribunal. In cases where the orders are not complied with ~~is~~ for a long period, the Applicants are compelled to move the Tribunal. These Contempt Petitions are, however, not to be treated as Miscellaneous Petitions. No court or Tribunal will permit its orders to be flouted. If the respondents set up a case in the counter affidavit justifying their action, they must also be prepared to face the consequences in case their/pleas are not accepted by the Tribunal. The normal practice has always been to offer an unconditional apology in Contempt Petitions in case the defence taken is not accepted. The Tribunal while adjudging the matter may accept the apology and in its discretion may reject the Contempt Petition provided it is satisfied that the offer of apology was unconditional and genuine.

A.J

It is a pity that Respondents who are often high Government officials in a case before the Tribunal do not realise the significance of a show cause notice to them in a Civil Contempt Petition. They are expected to appear on the date fixed either with a reply supported by an affidavit or seek time to file their reply and also ask for exemption from personal appearance.

If the Court grants the latter prayer, they may not appear except on the date when they are summoned by the Tribunal. In any event they are expected to file their reply within the time allowed by the Tribunal. They are bound to reply to all allegations of facts in the C.C.P., and controvert the allegations of facts and take such defence as is available to them. But an allegation of fact made in the C.C.P., can only be denied by a controversion in an affidavit filed by the respondents. If they justify their action or inaction, they have to make out a case that it was not wilful. If they justify their action and if it is not accepted by the Tribunal, they should also be prepared to face the consequences thereof. The Contemner, if found guilty, may be punished and that may include a term in jail.

V12/

The conventional practice has been to state that there had been no intention to flout or to disobey any order and in case the Tribunal finds against them they have to apologise to the Tribunal and pray for its mercy.

The Supreme Court has considered the question of "Apology" in H.P. SINGH V. THAKUR PRASAD (3). It is entirely in the discretion of the Tribunal hearing the case to accept the apology or not. It will depend on the facts and circumstances of the case. In case the Tribunal is satisfied with the cause shown by the respondents, it may discharge the notice of contempt and dismiss the C.C.P. The Tribunal may also warn the respondents if it thinks expedient. The power of a Tribunal in a contempt matter is wide. However, the Courts have always exercised this power to punish the contemners sparingly and with circumspection and restraint. But no court will shut its eyes to a case of 'Wilful dis-obedience' of its orders.

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Applying these principles to the facts of the present case, we do not find the reply to be in the form of an Affidavit. If the principles laid down in the aforementioned decisions are strictly followed then the objection filed by the respondents are not to be taken into consideration. Consequently, there is neither an apology nor a prayer for mercy.

Coming to the merits of the case, the order of the Tribunal in the O.A. clearly direct the respondents to give the consequential benefits to the Applicant/petitioner. The petitioner in O.A.No.244/87 filed the contempt Application and the Bench issued notice to the Respondents. On receipt of the notice, the respondents had to take action to find out what were the consequential benefits arising out of the final Order in O.A.No.244/87 and take action thereon. The respondents have done nothing and on the contrary took a stand that no action could be taken until the petitioner had made a claim. This is strange. Once the Tribunal has given a specific direction, it is not required by the Applicant/Petitioner in whose favour an order

has been made to make a claim in writing to the respondents. The respondents themselves may look into the matter and pass such orders as they may deem just and proper in compliance with the orders passed by the Tribunal. The respondents may or may not be satisfied with the orders of the Tribunal, it is for them to take up the matter in the appropriate forum. The respondents' duty will come to an end when they take some action in pursuance of the directions issued by the Tribunal. In the present case, we do not find any justification for the respondents for taking a stand which is to say the least 'unsustainable'.

The only argument which the respondents' counsel raised was that their action was not 'wilful'. They have taken the stand that the allegation of wilful dis-obedience is not correct. In that case they should have given a plausible explanation to justify their in-action.

Learned counsel sought to argue that the respondents would not know what the consequential benefits would be unless they were specified. There was no specific mention of the consequential benefits and as such they were not able to implement the order. This is not a satisfactory reply.

Ab

In a matter where a party has not been paid his salary and allowances for quite some time that would be easily discernible. At least it could be said on their behalf that they had made attempts but were not able to find out what exactly was required to be done. However, there is nothing on record to show that any such attempt was made.

Learned counsel then urged that the respondents did not quite comprehend the extent and import of the order dated 7-10-1986 and consequently, they were not able to take any action in the matter and pray for condonation of their lapses and tendered apology.

Learned counsel further gave an undertaking that the arrears of pay and allowances as are due to the petitioner would all be cleared within a month's time from today.

Having heard the learned counsel for the parties, we are of the view that we may accept the apology and in view of the undertaking discharge the Contempt Notice. We, however, feel that the ends of justice would be met by the above order, and impose costs of Rs.250/- on the respondents. We order accordingly.

P.Srinivasan
(P.SRINIVASAN)
MEMBER.

Ab
(AMITAV BANERJI)
CHAIRMAN.