

(3)
14

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

C.P.No.18/94 in C.C.P No.102/92

IN OA No.693/1988
NEW DELHI THE 12TH DAY OF APRIL, 1994
MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.K.SINGH, MEMBER(A)

Shri Komal Singh Petitioner
BY ADVOCATE SH.B.S.MAINEE. vs.

Shri Masih-Uz-Zaman,
Secretary,
Railway Board(Ministry of Railways)
Rail Bhavan, New Delhi. Respondent
BY ADVOCATE SH.H.K.GANGWANI.

ORDER (ORAL)

MR. JUSTICE S.K. DHAON:

On 7.9.1987, the disciplinary authority concerned imposed the penalty of removal from service upon the applicant. He challenged the said order by means of OA No.693/88 which was disposed of by this Tribunal on 6.11.1991. Relying upon the judgement in the case of **Union of India & ors. vs. Mohd.Ramzan Khan (JT 1990 (4) S.C.456)**, this Tribunal set aside the order of punishment imposed upon the applicant and directed the authority concerned that, if it desires, it may proceed from the stage of handing over of a copy of the report of the inquiry officer to the petitioner and thereafter dispose of the disciplinary proceedings in accordance with law. For the purpose of this contempt petition, it is necessary to quote in extenso, paragraph 5 of the judgement of this Tribunal:

"We, therefore, allow this O.A. on the ground that non-supply of a copy of the inquiry report by the Inquiry Officer to the applicant before the disciplinary authority imposed the penalty has resulted in great injustice and prejudice to the applicant. We, therefore, set aside the impugned order of removal from service passed by the disciplinary authority about the applicant vide Annexure A-I. We also set aside the appellate order rejecting the applicant's appeal by non-speaking order. However, we would clarify that this decision may not preclude the disciplinary authority from reviving the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report. The parties shall bear their own costs".

2. The petitioner filed CCP No.102/92 in this Tribunal with the complaint that the aforesaid judgement was not being implemented by the respondents. That CCP was disposed of on 13.7.1992. We may extract that portion of the order of this Tribunal which is relevant to the present controversy:-

"Though there is no specific direction in this behalf, the respondents have to carry out the directions by giving the necessary reliefs, flowing from the said judgement of the Tribunal to the petitioner. Learned counsel for the respondents submitted that arrears for which the petitioner would be entitled to shall be worked out and paid to him within a reasonable time. We record the statement and dispose of this petition. Notice of contempt issued to the respondents is hereby discharged."

3. In this petition, the complaint is that in spite of the order passed by this Tribunal in CCP 102/92 on 13.7.1992, the petitioner has neither been reinstated nor has back-wages been paid to him.

4. In defence, the respondent has pleaded that no specific order was passed by this Tribunal directing him to pay the back-wages to the applicant. Reliance has been placed by him upon a judgement of the Constitution Bench of the Supreme Court in the case of **Managing Director, ECIL, Hyderabad vs. B. Karunakar (JT 1993(6) S.C.1)**. In paragraph 31 of its judgement, the Supreme Court in Managing Director's case (supra) made the following observations which are relevant for the disposal of this CCP:-

"....The question whether the employee would be entitled to the back-wages and other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting

aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

4. The learned counsel for the petitioner vehemently urged that the respondents are estopped from taking the advantage of the judgement given by the Supreme Court in the case of Managing Director(supra). He has urged that in view of the categorical order/direction given by this Tribunal in CCP 102/92 that the respondents have to carry out the directions by giving the necessary reliefs, flowing from the judgement of this Tribunal and the fact that this Tribunal has noted the submission of the counsel for the respondents that arrears for which the applicant would be entitled to shall be worked out and paid to him within a reasonable time, the respondent is bound by the order of this Tribunal in CCP No.102/92.

The further argument is that the order of this Tribunal having been passed in the OA on 6.11.1991 and according to their own case, as set up in the counter-affidavit filed in the said CCP, the respondents permitted the applicant to join duty on 3.6.1992, the respondents having delayed the matter themselves are further estopped from relying upon the judgement of the Supreme Court in Managing Director's case (supra) which came later on.


5. The question set for to decide is whether in view of the declaration of law by the Supreme Court in Managing Director's case(supra) that when an order of punishment is set aside on technical grounds there should be a specific order of payment of back-wages upon reinstatement of a delinquent servant, we would be justified or we will have jurisdiction to direct the respondents in this CCP to pay the back-wages to the petitioner. It is trite law

that the judiciary does not enact law; it merely declares the law. Declaration of law means that the law was there from the very inception. In Managing Director's case(supra), the Supreme Court having declared the law, it is binding on us under Article 141 of the Constitution. We, therefore, hold that we will be acting without jurisdiction and even in the contempt of the Supreme Court if we direct the respondents to pay back-wages to the petitioner. We, therefore, hold that we are unable to grant any relief to the petitioner in these circumstances.

6. The learned counsel for the petitioner has lastly urged that, in any view of the matter, the petitioner having been reinstated in service on 3.6.1992, he should have been paid back-wages from 6.11.1991 to 3.6.1992. The short answer to this submission is that this grievance is not and cannot be the subject matter of this contempt petition. However, the learned counsel for the respondent stated at the Bar that so far disciplinary proceedings have not been re-initiated against the petitioner although the same are under contemplation. If the proceedings are dropped, the authority concerned shall act strictly in accordance with the law laid down by the Supreme Court in the Managing Director's case(supra). However, if the proceedings are re-initiated and in them some order is ultimately passed, the authority concerned shall ^{also} act strictly in accordance with law laid down by the Supreme Court in the Managing Director's case(supra).

sup

7. This petition is rejected. Notice of contempt issued to the respondent is discharged.


(B.K. SINGH)
MEMBER(A)


(S.K. DHAON)
VICE-CHAIRMAN(J)

SNS