

- 53 -

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

C.P. No. 50 of 1996 In

O.A./TXAY No. 629 of 1988

Decided on: 4.2.97

Pradeep Kumar

....Applicant(s)

(By Shri B.B. Raval

Advocate)

Versus

Shri Arun Dubey,

....Respondent(s)

Divisional Railway Manager,
Central Railway, Mumbai (VT).

(By Shri

Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE ~~SHRI~~ DR. A. VEDAVALLI, MEMBER (J)

1. Whether to be referred to the Reporter or not? *yes*

2. Whether to be circulated to the other Benches of the Tribunal? *yes*

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

-54-

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

C.P. NO.50 of 1996 In

O.A. NO.629 of 1988

NEW DELHI THIS THE ^{4th} DAY OF JULY, 1997

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Pradeep Kumar
S/o Shri Hari Shankar,
R/o 144, Gurdwara, Nagra Jhansi,
Jhansi (Madhya Pradesh). ...Petitioner

By Advocate Shri B.B. Raval

Versus

Shri Arun Dubey,
Divisional Railway Manager,
Central Railway,
Mumbai (VT).Contemner-
...Respondent

By Advocate Shri Jagjit Singh

ORDER

Hon'ble Mr. K. Muthukumar, Member(A)

In this Contempt Petition, the petitioner alleges wilful and deliberate disobedience of the respondents in not complying with the directions contained in the order and judgment dated 25.8.1995 in O.A. No. 629 of 1988.

2. In para 8 of the judgment in the O.A., the Tribunal directed as follows:-

" Accordingly, this O.A. is allowed with the following directions:

(a) The respondent (DRM Central Bombay VI) is directed to appoint applicant on the post of Khalasi (Electrical Department) on the next available vacancy in his Division after waiving the condition of age, but subject to the fulfilment of medical examination and other formalities as per rules. The applicant

h


shall, however, be given an intimation within 2 months from the date of this order, as to when the next vacancy is likely to arise or when he can expect the order of appointment.

(b) In the meanwhile, the applicant shall be engaged as a casual labourer in that Division - if the need to engage such labourer is felt, - on a priority basis, in preference to those who may have been engaged from 1.1.1986 or thereafter, without prejudice to his right to be regularly appointed under (a) above.

(c) The respondent is further directed to pay a lumpsum amount of Rs.2, 000/- to the applicant as costs".

3. The petitioner alleges that on the dismissal of the Review Application against the aforesaid order, the petitioner submitted a representation to the respondents. He had also represented earlier by his letter dated September, 1995 along with his representation dated 7.9.1995. The petitioner had requested the respondents to intimate the likely vacancy that was to occur as Electrical Khalasi in that Division and also prayed for necessary action to employ him as casual labourer without prejudice to his claim to be appointed as Khalasi on regular basis as directed by the Tribunal. The petitioner alleges that the respondents have not shown any intimation in compliance with the directions of the Tribunal and, therefore, alleges that they have committed a Civil Contempt of this Tribunal.

4. In the counter-reply, the respondents submitted that as ordered by the Tribunal an amount of Rs.2,000/- was paid to the applicant in the O.A. by cheque No.D-342036 dated 28.3.96 on the State Bank of India and this cheque was personally handed over to the applicant in the presence of two witnesses on 10.4.96. Respondents also submit that the applicant has since been appointed and a



copy of the appointment letter dated 15.4.96, the acknowledgement given by the applicant for accepting the said cheque was also communicated vide Annexures I and II in their counter-reply. In this Annexure I, it is stated that in compliance with the judgment of the Principal Bench dated 25.8.1995, the applicant, Shri Pradeep Kumar has been appointed as a fresh casual labourer on this Division and he was directed to report and was posted against a regular vacancy. The respondents explained their reasons for delay in implementation of the directions of the Tribunal partly due to the fact that the Review Application was dismissed only on 15.11.1995 and they have received a copy on 28.11.1995 and thereafter further action was taken by the Headquarter's office of the Central Railway which had to consult the Ministry of Railways for a decision whether Railway Administration should go in for SLP in the Supreme Court or implement the order. Railway Board's decision was communicated on 4.3.96 for the implementation of the order and accordingly, the applicant was directed to appear for medical examination along with other original certificates on 10.3.96 and on completing the medical examination, he was given order of appointment on 15.4.96. The respondents have also filed an additional affidavit in which they have tendered their unconditional apology for delay in implementing the order and referred to various stages which caused the delay as mentioned in the counter-reply.

5. When this matter came up for hearing on 16.7.1996, the Tribunal made the following observations and gave interim directions:-

h

" It is not clear either from the additional affidavit or from the order appointing the applicant as regular Khalasi, as to whether he was appointed against the first regular vacancy as directed by the Tribunal in its order. The respondents should do clarify the same by filing an additional affidavit. Further, the reason why the petitioner was not informed within 2 months from the date of receipt of a copy of this order as to when he was likely to be appointed on a regular basis, has also to be clarified. Further, the delay in engaging the applicant as a casual labourer has also needs to be clarified. In addition to all these, Shri Raval states that as per the directions of the Tribunal, a cheque for Rs.2,000/- was given to the applicant towards costs and the same was bounced. This according to the Shri Raval is wilful defiance of the orders of the Tribunal and which also needs to be clarified. Therefore, the respondents are directed to file an affidavit of Shri Arun Dubey, DRM, Central Railway within a period of 4 weeks explaining all these things".

6. In compliance with these interim directions, Shri Arun Dubey, DRM filed an additional affidavit dated 19.8.1996. When the matter was heard again on 3.10.1996, the learned counsel for the petitioner brought to the notice of the Tribunal that the respondents-contemner in his reply has not clarified when the first regular vacancy arose as was directed to be clarified by the last order of the Tribunal and has made certain personal accusations against the learned counsel for the petitioner in his personal capacity. He referred to para 15 of the affidavit filed by the respondent-contemner Shri Arun Dubey. He pointed out that when the matter was heard by the Bench on 16.7.96, he had not made any wrong statement regarding the bouncing of the cheque. In spite of this, the respondent-contemner has made a statement in the additional affidavit filed by him as follows:-

h

.5.

" The applicant's advocate has made this statement in an irresponsible manner and without verifying the correct facts with the sole intention to mislead the Hon'ble Tribunal and create prejudice against the respondents".

7. The learned counsel for the petitioner pointed out that the cheque had bounced on 17.4.96 as per Anneuxre CP-6 (colly) to the Contempt Petition and he had this in possession even on the date of hearing before the Division Bench on 16.7.96 and, therefore, it was incorrect on the part of the respondent-contemner to make such personal allegations against him and he prayed that the Divisional Railway Manager should be summoned on the next date of hearing and the Tribunal should consider suitable action against him for the Contempt of Court.

8. After hearing the matter and on the request of the learned counsel for the respondent-contemner, further opportunity was given as a last opportunity to file a complete and unqualified affidavit to the satisfaction of the Tribunal including a reply on his observations/averment in para 15 of the affidavit dated 19.8.96 against the learned counsel for the petitioner. It was further observed that the question of personal appearance on the respondent-contemner would be considered after the respondent-contemner files the supplementary affidavit as directed above and the matter was listed for hearing on 30.10.96 which was later on adjourned to 31.10.96. Shri Dubey, the respondent-contemner also filed an additional affidavit dated 18.10.96 in the meanwhile.

b

9. We have heard the learned counsel for the parties and have perused all the replies and the additional affidavits filed by the respondents.

10. The learned counsel for the petitioner strongly argued that there had been no misrepresentation on his part before the Tribunal when he mentioned that the cheque for Rs.2,000/- had bounced which should be verified from the Annexures to CP-6 wherein it was noted that the cheque was returned by the State Bank Jhansi for want of advice. Therefore, the learned counsel contended that the respondent-contemner by his counter-reply had deliberately and without verification had tarnished his reputation by describing that the applicant's advocate had made this statement in an irresponsible manner and without verifying the correct facts whereas it would be very clear that it was the respondent-contemner who had given his reply to the Tribunal without his verifying the factual position as was evident from the advise given by the State Bank while returning the cheque. He claimed that the respondent-contemner had acted without any proper advice and without caring to personally verify his own statement in the affidavit filed by him. The respondent-contemner cannot take shelter on the plea that the counter-affidavit was drafted by his counsel contending that it was the responsibility of the respondent-contemner himself who had sworn in this affidavit to verify the correctness of the statements made therein particularly when it involved certain allegations made against the counsel for the applicant. For this act of negligence itself, the respondent-contemner would have to be severely dealt with by the Tribunal. He also pointed out that in the ordinary

✓

course the respondent-contemner should have personally come and explained his position to the Tribunal and should have tendered his unconditional apology to the learned counsel for the applicant for his remarks against the counsel. He pointed out that the respondent-contemner has treated the Tribunal with utmost disrespect which would render him clearly liable for contempt action. The learned counsel for the respondent-contemner submitted that before filing the counter-reply, the concerned Bank had informed the respondents that the cheque dated 20.3.1996 had been cleared and credited into the account of the petitioner. The certificate issued by the Bank in this behalf had not made any mention of the dishonouring of the cheque in the month of April, 1996. The respondent-contemner was not informed at any time prior to his filing the affidavit in August, 1996 that this cheque was dishonoured any time and the respondents came to know only from the annexure to the rejoinder-affidavit filed on 28.8.96. In view of this, he submitted that when the matter came up on 16.7.96, the officials of the respondents who were personally present in the court on 16.7.96 were given this information by the oral submission made by the counsel for the petitioner about the bouncing of the cheque and the respondent-contemner was not aware of the 'no advice memo' stated to have been sent to the petitioner. However, when the additional reply was filed on 19.8.96 by the respondent-contemner, the fact of the cheque having bounced earlier was not within his knowledge and, therefore, the remarks at para 15 had been made. In the additional affidavit filed by Shri Dubey, he submitted as follows:-

" I categorically say that I had no intention to cause any assertion on the counsel or the petitioner or to malign him or to make any personal comments against him in any manner whatsoever and I express my unconditional regrets for the expression used in the additional affidavit filed on 16.8.96 and the said lines as mentioned above, may be deleted from my earlier affidavit and may not be read as part and parcel of the earlier affidavit dated 16.8.96. As regards the next available vacancy, the respondent-contemner had replied as follows:

".....I have directed my officials that the applicant has to be granted proforma fixation and seniority from the date when the next available vacancy in the Electrical Department after 25.8.95 to the post of Khalasi was available when the order of this Hon'ble Tribunal was passed".

Accordingly, I have further directed the concerned officials to grant proforma fixation and seniority as Khalasi on regular basis to the applicant with effect from 25.8.95 and the applicant should be placed at the appropriate place in the seniority list of Khalasi in the said Electrical Department. The concerned officials have accordingly issued an office order dated 15.10.96, a copy of which

h

has been served to the petitioner (Annexed herewith and marked as Exhibit R-1). Thus, the petitioner's appointment to the post of Khalasi has been made effective from 25.8.95 instead of 15.4.86". The respondent-contemner Shri Dubey also prayed that this may be treated as part and parcel of the affidavit filed earlier in full compliance and has prayed for suitable extension of time for implementation of the judgment till the filing of this affidavit. He also tendered his unconditional apology once again on his behalf and on behalf of his office for the delay in implementation of the judgment and submitted that the delay was neither intentional nor wilful nor was it intended to defy or commit any breach of the orders of the Tribunal.

11. We have considered the matter in all its aspects.

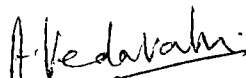
12. It is unfortunate that the respondent-contemner in his reply on 19.8.96, had alleged that the learned counsel for the petitioner had made an irresponsible statement before the Bench regarding the bouncing of the cheque. He has, however, subsequently admitted that this statement was made as he was not aware that the said cheque had bounced in April, 1996 itself. This would conclusively go to show that the respondent-contemner had made this statement without himself actually verifying the factual position from the

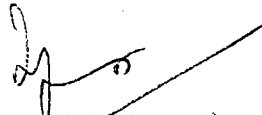
h

.10.

concerned official of the Bank concerned and had chosen to make allegations against the learned counsel for the petitioner. The respondent-contemner being a senior officer of the Railways, should have realised his responsibility before making such unfounded allegations against the learned counsel for the petitioner and that too, without verifying the factual position. This indeed is very regrettable. However, on the basis of the additional counter-reply filed by him and in view of the unqualified regrets he has expressed for his remarks against the counsel for the petitioner and also in view of his unconditional apology for the delay in the implementation of the judgment and his clarification on the question of appointment of the applicant in the next available vacancy, which arose in August, 1995 as furnished to the Tribunal and on the basis of the order passed in this behalf on Exhibit R-1, we are inclined to take a **lenient** view of the matter. The learned counsel for the petitioner has also gracefully left the matter regarding the personal allegations against him by the respondent-contemner to the Tribunal.

13. In the circumstances, we are of the considered view that the matter should rest at that but we would however advise the respondent-contemner to be more careful in his submissions in his sworn affidavits, before the Tribunal, in future. With this, the contempt petition is disposed of and the notice is discharged.


(DR. A. VEDAVALLI)
MEMBER (J)


(K. MUTHUKUMAR)
MEMBER (A)

Rakesh