

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

CCP-69/89 In

O.A. No. 1681/88

T.A. No.

199

DATE OF DECISION 10.8.1990.

Shri S.C. Bhattacharya

Petitioner

Shri B.B. Rawal

Advocate for the Petitioner(s)

Versus

Union of India &amp; Others

Respondent

Shri P.H. Ramchandani

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

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

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The petitioner, who is the original applicant in OA-1681/88, has alleged that the respondents have not complied with the directions of the Tribunal in its judgement dated 1.11.1988 and has prayed that they be hauled up for having committed contempt of Court.

2. In OA-1681/88, the applicant had questioned the order of his removal from service passed on 21st October, 1987 and also prayed for a direction to the respondents to make immediate payment of his pay for September, 1984.

3. The aforesaid application was disposed of by the Tribunal by its judgement dated 1.11.1988 with the following directions:-

- (i) The respondents shall furnish to the applicant a copy of the order dated 21st October, 1987

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removing him from service, as also a copy of the enquiry report on which the said order was based. The applicant, after receiving the impugned order of removal along with the copy of the enquiry report, may file an appeal to the Appellate Authority within a period of 30 days of their receipt by him and the same shall be entertained and disposed of by the respondents on the merits within a period of 45 days from the date of filing of the appeal.

- (ii) The respondents shall verify the position in regard to the payment of salary for September, 1984 and in case the applicant had actually attended to his duties during the said period, the salary for the period in question shall be released.
- (iii) The applicant is not precluded from filing a fresh application in accordance with law after exhausting the remedies available to him under the Service Rules.

4. The petitioner has alleged that the respondents sent to him letter dated 28th November, 1988 and that he submitted an appeal on 26th December, 1988. The respondents did not, however, comply with the directions given by the Tribunal.

5. The petitioner has impleaded Shri P.G. Muralidharan, Secretary, Department of Statistics, Ministry of Planning, as the first respondent; Shri Sardana, Director General & C.S.O. and ex-officio Additional Secretary, Department of

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Statistics, as the second respondent; Shri Mukul Roy, Under Secretary, Department of Statistics, as the third respondent; and Shri N.K. Johar, Administrative Officer, as the fourth respondent. The reply affidavit to the C.C.P. has been filed by Shri V.V.P. Rao who is working as Deputy Secretary in the Department of Statistics.

6. The learned counsel for the Petitioner has argued that the reply affidavit should be filed by one of the respondents named in the Petition and that the reply filed by the Deputy Secretary, should not be taken on record. He also called in question the locus standi of Shri P.H. Ramchandani, learned Government Counsel, to appear on behalf of the respondents. Shri Ramchandani has not filed any Vakalatnama authorising him to appear on behalf of the respondents.

7. We have gone through the records carefully and have considered the rival contentions. In our opinion, the implementation of the orders of the Tribunal is the responsibility of the Union of India and as such, it will not be fair and just to initiate proceedings against the officers working under the Union of India for the alleged non-compliance of the judgement of the Tribunal merely because the petitioner has chosen to implead them by name as respondents. It is well settled that the jurisdiction to punish for contempt should be exercised with great care and caution, in the Court's discretion. Whether it is expedient and proper to take action under the Contempt of Court Act, 1971, has to be determined not merely on the basis of the allegations made in the petition or the submissions made by the Counsel of the petitioner.

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As such, determination should be made in a fair and objective manner, the procedure to be followed would be entirely in the discretion of the Bench concerned.

8. The Union of India functions through its officers who normally perform their duties in official capacity. It is, therefore, for the Tribunal to direct whether or not in a given case, the officer named in the petition himself should appear in person or through a Counsel of his choice. Every Under Secretary to the Government of India and above has the general authority to sign and swear affidavits in Courts. Government may authorise other officers also to file affidavits in legal proceedings. We are, therefore, of the view that unless the Tribunal holds otherwise, an officer of the Government duly authorised in this behalf is competent to file affidavits in legal proceedings, including contempt proceedings. Accordingly, we have taken on record the reply affidavit filed in the instant case.

9. We are also not impressed by the contention of the learned counsel for the applicant that the Government Counsel cannot appear on behalf of the respondents in the C.C.P. By the act of the petitioner in naming certain officers as respondents in the C.C.P., they do not become contemnors. The cause of grievance of the petitioner is due to a decision taken by the Government or due to its inaction. It will not, therefore, be appropriate to proceed against them in their personal capacity as a matter of routine. An officer who may be named as the alleged Contemner, is also entitled to be defended by a legal practitioner of his choice, including a Government

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Advocate, or the Standing Counsel of the Government  
(see Rule 13 of the <sup>Q. C.A.T.A. (Contempt) Rules</sup> read with Section  
23(2) of the Administrative Tribunals Act, 1985).

The Government had taken a policy decision in 1954 to undertake defence in such cases and meet the litigation expenses from the public exchequer. Shri Ramchandani's name has been notified as a Government Counsel and he is entitled to represent the cases of the Central Government, including its officers before the Tribunal in every matter, or proceedings, irrespective of whether he files his Vakalatnama or other authority on behalf of the Government.

10. The respondents have stated in their reply affidavit that the petitioner was served with the order of his removal from service dated 21.10.1987, along with a copy of the enquiry report and the information about payment of salary for the month of September, 1984, that he preferred his appeal on 26th December, 1988, that it was considered and rejected by the Appellate Authority and that the appellate order was sent to him by registered post which was received back with the endorsement "Left without address".

11. We see no reason to disbelieve the above version given by the respondents. The petitioner has not made out a prima facie case for initiating contempt proceedings against them. The petition is, therefore, dismissed and the notice of contempt discharged. We, however, make it clear that in case the petitioner is aggrieved by the

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decision given by the Appellate Authority, he will be at liberty to file a fresh application in accordance with law, if so advised. There will be no order as to costs.

*D. K. Chakravorty*

(D. K. Chakravorty)  
Administrative Member

10/8/90

*P. K. Kartha*  
10/8/90

(P. K. Kartha)  
Vice-Chairman (Judl.)