

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

CCP 147/88 in

O.A. No. 228/
T.A. No.

198 8.

DATE OF DECISION December 8, 1988.Shri J.K.Varshneya

Petitioner

Shri Jagjit Singh,

Advocate for the Petitioner(s)

Versus

Union of India & Ors

Respondents.

Shri P.H.Ramchandani,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? X

MGIPRRND-12 CAT/86-3-12-86-15,000

Handwritten
(Kaushal Kumar)
Member (A)

AB
(Amitav Banerji)
Chairman.

Central Administrative Tribunal
Principal Bench

CCP 147/88 in
OA No 228/88

Date of Decision 8-12-1988

Shri J.K. Varshneya Applicant

vs.

Union of India & Ors Respondents

Coram

Hon'ble Mr. Justice Amitav Banerji, Chairman
Hon'ble Mr. Kaushal Kumar, Member

For the applicant Shri Jagjit Singh, counsel.

For the respondents Shri P.H. Ramchandani,
Sr.counsel.

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

By an order dated 18th July, 1988, a Bench of this
Tribunal quashed the suspension order on the applicant, who
was Chief Engineer in the C.P.W.D. on deputation to the
Delhi Development Authority. The operative part of the
order reads as follows:

"The suspension order is quashed with immediate
effect and the applicant shall be reinstated in
service forthwith.

This order shall be complied with within
a period of two weeks from the date of its receipt
by the Respondents.

It is, however, made clear that if the
enquiry is proceeded with, how the period of sus-
pension already undergone shall be treated will be
decided by the competent authority in accordance
with law."

The applicant filed a CCP stating that the above
order had not been complied with by the respondents. The
Bench hearing the matter passed an order on the 6th September,
1988, the relevant portion of which is as follows:

"All that they had to do was to issue an order re-instanting the applicant as directed in OA 228/88. It is, therefore, now declared that the applicant shall be deemed to have been reinstated w.e.f. the date of expiry of period of 15 days, i.e., 2.9.1988. The petition for extension of time is rejected."

The respondents filed Special Leave Petitions in against the Hon'ble Supreme Court the order dated 18th July, 1988 and the above order dated 6.9.1988. The Supreme Court passed the following order on 3.11.1988:

"We do not consider it a fit case for interference, although we do not agree with the observations made by the Tribunal that the nature of charges do not warrant the respondent's suspension. The Special Leave Petitions are accordingly dismissed. The petitioner is granted one week's time to comply with the order of the Tribunal."

Learned Counsel for the respondents drew our attention to the order dated 8th November, 1988 passed by the Under Secretary to the Government of India in the Ministry of Urban Development, whereby the suspension order was revoked w.e.f. 2nd September, 1988. The applicant was posted as Chief Engineer(Training) C.P.W.D. for with immediate effect. Further, the period from 2.9.88 till the date the applicant actually takes over charge of the post of Chief Engineer(Training), he was to be adjusted against the post of Chief Engineer (Training).

The third order indicated that during the period 20th June, 1986 to 1st September, 1988 the applicant will be treated as non-duty for all purposes including

pension, and his pay and allowances for that period should be restricted to that of subsistence allowance already paid and drawn by him subject to review under F.R. 54-B(6) after the finalisation of the disciplinary case.

The CCP has come up before us for further orders today. We have heard Shri Jagjit Singh, counsel for the applicant and Shri P.H. Ramchandani, Sr. Counsel for the respondents. In view of the above order of the Supreme Court and the order of revocation of suspension and his re-instatement, the CCP merits to be dismissed but the learned counsel for the applicant urged that the order on OA dated 18th July, 1988 was to be implemented w.e.f. 18th July, 1988 and not from a later date i.e. 2.9.1988. He prayed that suitable orders may be passed in this respect. He drew our attention to the sentence in the order dated 18th July, 1988: "The suspension order is quashed with immediate effect and the applicant shall be re-instated in service forthwith." He urged that the above order had to be complied forthwith and not from a later date.

Shri Ramchandani, however, urged that the same order also provided for its compliance within two weeks from the date of its receipt by the respondents. He urged that the order was received on 18.8.1988 (a fact noticed in the order dated 6.9.1988) and complied with w.e.f. 2.9.88 as per the subsequent order of the Bench

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dated 6.9.1988. According to the learned counsel, the Bench clarified/modified the operative part of the order on OA dated 18.7.1988. The terms 'with immediate effect' and 'forthwith' used in the order dated 18th July, 1988 were made explicit by fixing the date of reinstatement as 2.9.1988. As such, he urged no case was made out for passing any further order on the CCP except to dispose it of.

Although the order dated 18th July, 1988 clearly stated that the suspension was quashed with immediate effect and that the applicant was to be reinstated forthwith, respondents were given two weeks' time to comply with the order, from the date of its receipt. The latter expression only meant that the respondents had to pass necessary/consequential order within two weeks from the receipt of the order. The order became effective from the date of the order on OA, viz., 18.7.1988. This meant that the date of reinstatement would be 18th of July and had to be implemented within two weeks of the receipt of the copy of the order. It is on record that a copy of the order was received on 18th August, 1988 and ^{as} such, the implementation orders had to be passed by 1st of September, 1988.

In this case, the implementation orders were not passed within this period of time. The CCP was filed on 2nd September, 1988. A Miscellaneous Petition for

extension of time was moved on 1.9.88. Both these matters came up before the Bench on 6th September. The Bench observed that all that they had to do was to issue an order reinstating the applicant as directed on 18th July, 1988. The Bench further passed the order that the applicant shall be deemed to have been reinstated w.e.f. 2.9.88. The court further observed *prima facie* the non-compliance of the order amounts to contempt. Time was granted in the CCP for filing a reply on or before 30th September, 1988 failing which the respondents shall appear in person before the Tribunal on 12th October, 1988.

From a perusal of the order sheet, it appears that the matter came up before the Bench on 17th October, 1988 when the applicant made a complaint that the order had not been complied with, in as much as, the respondents have not allowed the petitioner to join duty and were not paying him his full salary and were treating him as if he was still under suspension. The order declaring the petitioner as deemed to have been reinstated in service had not benefitted him in any way. It was pointed out on that date by the respondents that Special Leave Petition had been filed in the Hon'ble Supreme Court but nothing could be brought to the notice of the Bench about any orders staying the implementation of the Tribunal's orders. The respondent, Secretary, Ministry of Urban Development, Nirman Bhavan, New Delhi, was directed, in the absence of any order to the contrary by the Supreme Court, to comply

with the order of the Tribunal by issuing an order of reinstatement of the petitioner in service and pay the full salary due to him, failing which he was directed to appear before the court on 4.11.1988 to answer the charge of contempt. On the 4th November, 1988 when the matter was listed, counsel for the parties appeared and it was brought to the notice of the Bench that the Supreme Court had dismissed the SLP filed by the respondents and had granted one week's time to implement the judgement of the Tribunal. Thereafter, the matter was ordered to be listed on 18th November, 1988.

From the narrative of facts which are not disputed, it is abundantly clear that even after the orders dated 6th September, 1988 and 17th October, 1988, the respondents had not implemented the order passed in OA 228/88 nor the order dated 6.9.88 on the CCP. As a matter of fact, the implementation orders were passed on 8.11.88 i.e. after a period of two months from the order dated 6.9.88. There is no manner of doubt that the order of the Tribunal had not been complied with during this period. It must be noticed that the Supreme Court had not granted any interim order staying the proceedings in the CCP. Mere filing of SLP against an order of the Tribunal does not stay the operation of the impugned order. Learned counsel for the respondents urged that there was no intentional delaying of the implementation in the present case and that the respondents had acted bona fide. They were aware that the Bench by its subsequent order dated 6.9.88 had

declared the applicant deemed to be reinstated w.e.f. 2.9.88 and as such, they only awaited the decision by the Supreme Court in the matter. We feel that we must observe that the respondents have not implemented the order as directed by the Bench and this has to be deprecated. The applicant was compelled to file the CCP on 2nd September, 1988 when the order dated 18th July had not been complied with. It is not expected of the respondents to delay the implementation of an order passed by the Tribunal. It is no doubt true that the applicant would have got all the benefits from the date specified by the Tribunal no matter whenever the order was implemented. But the normal expectancy is that the respondents would implement the orders of the Tribunal without delay and in accordance with the directions given.

We have considered the matter and heard the counsel. In our opinion, it will serve no purpose to proceed with the CCP any further. The order has ^{now} been implemented. We will also record here that the learned counsel for the applicant fairly stated that the applicant was not proceeding against the respondents for the failure to implement the order between 7th September to 7th November, 1988. We, therefore, feel that the CCP may be dismissed.

Another contention raised by the learned counsel for the applicant was that the applicant was being paid subsistence allowance w.e.f. 20.6.1988 which was three-fourth ^{as} _{as}

of his pay and emoluments and directions may be issued that the full pay and allowances be paid w.e.f. 18th July, 1988. It was also urged that it was a small amount for the respondents. This contention has also no force. The enquiry proceedings are pending and they have not been concluded. Only the suspension order has been revoked. The order dated 18th July, 1988 makes it clear that it will be for the competent authority to decide how they treat the period of suspension. In view of the above, it is not open to the Bench to adjudicate on this point.

However, we would make an observation in this case. The original order of the Bench dated 18th July, 1988 was very specific that the suspension order against the applicant was quashed with immediate effect and he was ordered to be reinstated in service forthwith. The date of reinstatement would thus have to be 18th July, 1988 in terms of the judgement in OA No. 228/88. The declaration made by the court on 6th September, 1988 fixing the date of deemed reinstatement as 2nd September, 1988 was in the context of the Contempt Petition and not any Review Petition as such. It did give the respondents extension of time in giving effect to the order from a late date. Once an OA had been decided, its operative part could not be varied except upon review. However, in our opinion, there is no bar for the respondents to implement

the order of reinstatement from the date of the judgement in the OA i.e. 18.7.1988 with consequential benefits.

We do not propose to say anything more and leave it to the Respondents to pass such appropriate orders as may be deemed fit in the circumstances of the case.

In the result, therefore, the CCP is dismissed but there will be no order as to costs.

kaushal kumar
(Kaushal Kumar)
Member
8-12-1988

AB
(Amitav Banerji)
Chairman
8-12-1988