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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI

CCP No. 49/89 in
OA 535/1989

Date of decision: April 18, 1990.

Shri A.N. Agarwal
vs

Applicant

Shri J. Rajagopalachary
GM, Northern Railway & Others

Respondents

For the Applicant

Shri B.S. Mainee,
counsel.

For the Respondents

Shri O.N. Moolri, counsel.

ORDER

The Petitioner, Shri A.N. Agarwal, in this Civil Contempt Petition has complained that the orders passed on 17.3.1989 in the Original Application for maintaining statusquo have been flouted by the Respondents and they be specifically dealt with under the provisions of the Contempt of Court Act read with Section 17 of the Administrative Tribunals Act, 1985. Material facts of the case are as follows:

While admitting the O.A. on 17.3.1989, the Single Member Bench passed the following order:

"On interim relief, the respondents may state within a fortnight why the stay of the transfer order should not be granted. They should file their reply by 31.3.1989. Till then the statusquo will be maintained.

Dasti allowed."

A copy of the order was obtained and served Dasti on Respondent No.1 on 17.3.1989 and Respondent No. 2 on 20.3.1989. A copy of the order was also taken by the petitioner and served on the Station Master, Kotdwara (Garhwal, UP) where the petitioner was posted. The

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Station Master, however, did not allow the petitioner to perform duty and he awaited instructions from Respondent No. 3 before allowing the petitioner to resume duty. In the meantime, the petitioner appeared before the Railway doctor for medical examination and having been declared fit reported for duty on 25th March, 1989 before the Station Master, Kotdwara. The latter informed the petitioner that the Respondent No. 3 had passed an order that the petitioner should be relieved on transfer after his resumption of duty. He was being transferred to Moradabad Station. The petitioner received the orders but pointed out that there was a statusquo order passed by the Tribunal on 17.3.1989. The petitioner aggrieved by this transfer in spite of the statusquo order has filed this present petition.

On behalf of the respondents, it was pointed out that the respondents have not wilfully disobeyed the order of the Tribunal dated 17.3.1989. As soon as the matter was brought to their notice on the 5th April, 1989, orders were passed forthwith to the respondent No. 4 to take the petitioner back on duty immediately at Kotdwara. The respondents also took the plea that the order passed by the Tribunal was not served on the respondents on the dates as mentioned by the petitioner. It was further stated that even if a copy of the order had been left with the clerk on duty, it would not mean that the respondents 1, 2 and 3 were aware of the order.

The office of Respondents No. 1 and 2 is a big office and letters and notice served take some time before they reach the concerned officer. It was also stated that every employee of the Railway was not acquainted with the court proceedings and importance of its orders. It was also pointed out that the petitioner was transferred from Kotwara to Moradabad on various charges framed against him vide two Chargesheets dated 27.1.89 and 31.1.89 and it was not considered conducive in the interest of administration to retain him at Kotwara. As soon as the petitioner had received the transfer order, he had approached the Tribunal and by suppressing the material facts, got an interim order in his favour. Allegations were made that the petitioner never met respondents on 20th March, 1989 and that he was on sick leave upto 25th March, 1989 and yet he had undertaken the journey. Lastly, it was stated that the respondents had no intention of flouting any order of the Tribunal. However, they tendered their unconditional apology to the Tribunal if the act of respondent No. 4 was contrary to the orders of the Tribunal.

We have heard Shri Mainee, counsel for the petitioner and Shri O.N. Moolri, counsel for the respondents. We wish to make it clear that the orders passed by the Tribunal whether interim or final are to be obeyed by

the authorities concerned. There is no occasion for not complying with the orders. If discretion was given to the respondents in OAs/TAs/RAs whether to obey the orders immediately or not, the very system of judicial administration would collapse. The present system of judicial review is sustained by the fact that the orders passed by the courts and Tribunals have to be obeyed and carried out. If there be any error or doubt that can be clarified by making a suitable petition/application to the court or the Tribunal.

It may be that at times the respondents are not duly served or are not aware of the exact order. After obtaining an interim order, the petitioner should serve the copy of the order on the concerned authority in his office. It is usually received by a receiving clerk or other authority who should immediately place the matter before a superior authority for necessary action immediately. It should reach the concerned authority, particularly the person dealing with the matter or with the case of the petitioner. It may take a little time in the office but normally the ~~not~~ is received and ~~hiatus~~ should be more than a day or two after the paper/ moves from one room to another in the office. Some time it may take a little more time in case the officer concerned is not available in his office and is on tour. But there is always a link officer.

There are three elements which are necessary to be kept in mind in a CCP. Firstly, the order that has been passed by the Tribunal. Secondly, the service of the order on the respondents or the party concerned. Thirdly, the non-compliance of the order passed by the Tribunal. It is imperative that the order is served on the respondent or the party concerned. Any disobedience of the order being unaware of the same is excusable upon proof of the above plea. The interim or the final order of the Tribunal must be served on the party concerned or on some authorised person in his office. It is trite that unless the order has been served on the respondent concerned question of taking action under the Contempt of Courts Act does not arise. The third feature is that there has to be a wilful disobedience of the order passed by the Tribunal. This may be by an act of commission or even by an act of omission. There are some orders which require to be acted upon and the failure to do so may amount to disobedience of the order of the Tribunal. There may be a restraint order, where the respondent is directed not to do a particular act or even an order, known as 'status quo' order, yet the respondent takes action contrary to the order. This would be an act of commission. The burden is on the petitioner to establish all this. He has to make positive assertion in his CCP that the act of omission or commission is contrary to the direction in the order of the Tribunal. In other words he has to assert and establish that a particular officer or authority was fully aware of the order and he

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had even thereafter disobeyed the order. Until this is established, there is no occasion for taking action under the Contempt of Courts Act or under Section 17 of the Administrative Tribunals Act. The Respondents have also to state their case - whether they were aware of the order, whether it was served on them and the reason for non-compliance of the order. In case they had complied with the order, they have to state it as well, giving necessary particulars. It is thereafter on the Tribunal to decide the matter and pass orders on the CCP.

Keeping in view the above we now look at the relevant facts and circumstances. The interim order is dated 17.3.89. It was served on Respondents 1 and 2 on 20th March, 1989 vide endorsement made on page 6 in Part 'C' file of the case in the Tribunal. There is, however, nothing on the file to show that the Respondent No. 3 was served on 20th March, 1989. Respondent No. 4 is said to have been served on 18th March, 1989 but there is dispute on this point. It is, however, clear that there is an order by Respondent No. 3 to transfer the Petitioner to Moradabad from Kotdwara, dated 25th March, 1989. It is this order which is said to have violated the interim order dated 17th March, 1989. A plea has been taken by the Respondent that Respondent No. 3 was unaware of the order dated 17th March, 1989 and that he had not passed the said order wilfully. It may be that the Station Master, Kotdwara was aware of the order dated 17th March but he had not passed

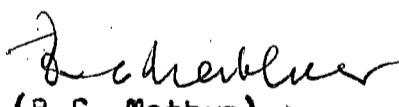
the order dated 25th March. It was passed by the Sr.

Divisional Commercial Superintendent, Moradabad,

Respondent No. 3.

Several contentions were raised in this case but we do think it necessary to advert to them for we find that the Respondent No. 3 corrected his order on the 5th April, 1989 and the Petitioner was posted back at Kotdwara. The plea taken is that he was not aware of the order dated 17th March and as soon as he came to know of it, he corrected it.

It is apparent from the above that the respondent No. 3 corrected the position in accordance with the order of the Tribunal at the earliest. The Petitioner is working at Kotdwara. In view of the above, we are not inclined to take any action under Section 17 of the A.T.Act. The order of the Tribunal has been complied with and as such this CCP fails and we order accordingly. There will be no order as to costs. The notice issued on the CCP is discharged.


(B.C. Mathur)
Vice Chairman (A)

18.4.1990


(Amitav Banerji)
Chairman
18.4.1990