

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

CCP-135/89 In

O.A. No. 1503/89

T.A. No.

198

DATE OF DECISION

18.12.1989.

Shri Ashok Kumar Mittal _____ Applicant (s)

Shri B.B. Rawal _____ Advocate for the Applicant (s)

Union of India & Ors. _____ Respondent (s)

Smt. Ashoka Jain _____ Advocate for the Respondent (s)

CORAM :

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

The Hon'ble Mr. I.K. Rasgotra, 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. To be circulated to all Benches of the Tribunal ? *No*

JUDGEMENT

(delivered by Hon'ble Shri P.K. Kartha, V.C.)

This petition has been filed by the original applicant in OA-1503/89 praying that contempt proceedings may be initiated against respondent No.2 (Shri B.B. Arya, Sub-Regional Employment Officer (Technical), Sub-Regional Employment Exchange, Pusa, New Delhi) to award deterrent punishment to him for non-compliance of the directions of this Tribunal and direct the respondent No.2 to award exemplary cost to him from his pocket.

2. The respondents have filed their reply and the applicant, his rejoinder.

3. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. We may, at the outset, recall the following

On

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orders passed by the Tribunal on 2.8.1989 and 10.8.1989 which have been alleged to have been flouted by the respondents:-

"2.8.89

Heard Shri B.B. Rawal, counsel for the applicant.

As directed by us on 1.8.1989, Shri Rawal places before us a photocopy of an order passed in OA No.644/89 - Rajesh Kumar Sharma Vs. UOI & Anr. by another Bench of this Tribunal, relating to the Delhi Electric Supply Undertaking. We are satisfied that the questions urged in this application need to be examined further. Hence, admit.

Orders on interim relief

We are satisfied that the interim relief prayed for by the applicant merits consideration. We direct Respondents 1 and 2 to instruct the authorities concerned under them to allow the applicant provisionally to appear in the written test/interview which have commenced with effect from 27.7.1989 and to keep his result in abeyance pending disposal of this application.

Let a copy of this order be sent to Respondents 1 and 2 as also to the authorities concerned.

Notice (dasti) returnable on 14.8.89.

Sd/- T.S. Oberoi
Member (J)

Sd/- L.H.A. Rego
Member (A)

"10.8.89

Applicant by Shri B.B. Rawal, Counsel.

Vide our order dated 2nd instant, we directed respondents 1 and 2 to instruct the authorities concerned, under them, to allow the applicant provisionally to appear in the written test/interview, which had commenced with effect from 27th July, 1989. The counsel for the applicant has submitted that in spite of service of the said order having been effected, as per directions contained therein, his client has not been admitted in the test/interview so far. He has also informed us that the interviews, which were to commence from 27th July, 1989, and were to conclude on 4th August, 1989, have now been extended to go on upto 14th instant and has, therefore, sought our directions upon respondent 2 to do the needful, in accordance with the directions earlier given.

On

The learned counsel for the applicant to file an affidavit ~~dually registered~~ to the effect that service has been duly effected on respondents 1 and 2, in accordance with the aforesaid order.

In view of the above position, and in view of our earlier order, we repeat and call upon respondent No.2, to allow the applicant to sit in the written test/interview if yet to be continued upto 14th instant, as prayed in the MP, and ensure compliance in this respect. MP stands disposed of accordingly.

A copy of this order be given to the learned counsel for the applicant for effecting service on respondent No.2 dasti. Also, a copy be sent to respondent No.2 through a special messenger, tomorrow, on filing of the affidavit of service, as directed above.

Sd/- M. M. Mathur
Member (A)

Sd/- T. S. Oberoi
Member (J)"

4. The name of the applicant has been registered with the Employment Exchange. He has applied for the post of Junior Engineer (Civil) in the Municipal Corporation of Delhi for which candidates are sponsored by the Employment Exchange. While admitting the application on 2.8.1989, the Tribunal passed an ad interim order directing the respondents 1 and 2 to instruct the authorities concerned to allow the applicant provisionally to appear in the written test/interview which was stated to have commenced w.e.f. 27.7.1989 and to keep his result in abeyance pending disposal of the application. A copy of the interim order was directed to be sent to respondents 1 and 2 as also to the authorities concerned and notice dasti was issued, returnable on 14.8.1989.

5. On 10.8.1989, the learned counsel for the applicant submitted before the Tribunal that in spite of the aforesaid interim order, the applicant had not been admitted in the test/interview for which the time had been extended upto 14th August, 1989. The learned counsel for the

applicant was directed to file an affidavit to the effect that service had been duly effected on respondents 1 and 2 in accordance with the aforesaid order. The Tribunal, vide its order dated 10.8.1989, repeated and called upon respondent No.2 to allow the applicant to sit in the written test/interview if the same were to be continued upto 14th August, 1989 as prayed for in MP-1741/89. Further, the Tribunal directed that a copy of the order be given to the learned counsel for the applicant for effecting service on respondent No.2 dasti. A separate copy was directed to be sent to respondent No.2 through a special messenger on 11.8.89 on filing of the affidavit of service, as directed in the order.

5. The version of the applicant in the present petition is that a copy of the Tribunal's order dated 2.8.1989 was served on respondent No.1 on 3.8.1989 and on respondent No.2 on 4.8.1989. He has relied upon the proof of dasti notice filed by him.

7. When the applicant did not receive any intimation from respondent No.2, he is stated to have approached him personally on 9.8.1989 which was of no avail.

8. The applicant further states that the dasti copy of the order dated 10.8.1989 was collected on 11.8.89 and was served on respondent No.2 on the same date for which the learned counsel for the applicant has filed an affidavit in proof of service.

9. In spite of the second notice/order of the Tribunal dated 10.8.1989, it is alleged that respondent No.2 did not forward the name of the applicant for interview/test till 14.8.1989. Q

10. The respondents have stated in their reply affidavit that the service of the notice was effected in his office on 11.8.1989 which was a Friday. He sponsored the name of the applicant on 14.8.1989 as per the directions contained in the Tribunal's order. Thus, there are two conflicting versions before us - one, of the applicant that the order dated 2.8.1989 was served dasti on respondent No.2 on 3.8.1989 and on respondent No.1, on 4.8.1989 and, second, that of the respondents, that the service of the same was effected only on 11.8.1989.

11. We have gone through the dasti notices which have been received in the offices of respondents 1 and 2. The service only shows initials of some persons without their names or designations and with office seals. The notices were not addressed to persons by name but by designation. What the Tribunal has to see in the context of the present petition is whether the respondents wilfully and deliberately disobeyed the directions contained in the Tribunal's orders dated 2.8.1989 and 10.8.1989. No definite opinion can be formed on the question whether the said orders came to the knowledge of the officers concerned on 3.8.1989, as contended by the applicant, or on 11.8.1989 as contended by the respondents. Admittedly, they forwarded the name of the applicant to the office of respondent No.3 on 14.8.1989 though the action appears to be belated. We have no material before us to conclude that the respondents have deliberately and intentionally flouted the orders of the Tribunal, duly taking note that 12th and 13th August, 1989 were closed days.

12. We would have left the matters there and discharged the C.C.P. However, we have noticed in the rejoinder

affidavit dated 30.9.1989 filed by the applicant to the reply of the respondents in the C.C.P. certain remarks which a litigant ought not to have made in his pleadings. This will be borne out from the following passage occurring on page 6 of the rejoinder affidavit:-

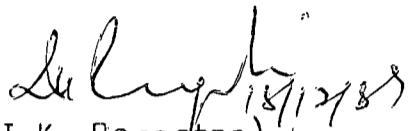
"If the respondent No.2 with blatant disregard of not one nor two but three orders of this Hon'ble Tribunal is allowed to go scot free, the very raison de'tre for the creation of this noble institution will be defeated and the general impression prevailing among the Government servants that this Tribunal, though equivalent to High Court, is nothing but an extension of the executive, as the Executive hand of the Government has got an upper hand in choosing the personnel to man this Tribunal. Failure to punish such criminal bureaucrats will also embolden his tribe in other departments to follow suit and a stage will come where the Tribunal will be shown no regards whatsoever, not to talk of that deserve to be shown to a High Court."

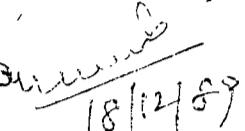
13. In our opinion, the passage extracted above from the rejoinder affidavit filed by the applicant has been couched in unsavoury language and the same appears to be not within the bounds of propriety.

14. In view of the above, while discharging the C.C.P. 135/89 in OA-1503/89, we direct the Registry to forthwith strike out with red ink the passage occurring in the rejoinder affidavit filed by the

applicant extracted above and submit the paper-book to us for perusal.

15. Let a copy of this order be marked to the Hon'ble Chairman for his information and such other action as he may deem fit.


(I.K. Rasgutra)
Administrative Member


18/12/89
(P.K. Kartha)
Vice-Chairman(Judl.)