

**Central Administrative Tribunal
Principal Bench, New Delhi**

C.P. No.28/2007 & M.A. No.918/2007

IN

O.A. No. 2084/2004

Monday, this the 7th day of May 2007

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Neena Ranjan, Member (A)

B.P. Bhardwaj & others

..Applicants

(By Advocates: Shri GD Bhandari and Shri SN Anand)

Versus

Shri Shekhar Dutt, Secretary, Ministry of Defence
South Block, New Delhi & others

..Respondents

(By Advocates: Shri DS Mahendru and Shri MK Bhardwaj for
Shri AK Bhardwaj)

1. To be referred to the Reporters or not? yes
2. To be circulated to other Benches of the Tribunal or not? yes

S. Raju
(Shanker Raju)
Member (J)

36

**Central Administrative Tribunal
Principal Bench, New Delhi**

C.P. No.28/2007 & M.A. No.918/2007

IN

O.A. No. 2084/2004

Monday, this the 7th day of May 2007

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Neena Ranjan, Member (A)

1. B.P. Bhardwaj
s/o Shri Ram Sharma
Delhi Area Station Canteen
25th Mall Road
Delhi Cantt. 110 010
2. Anil Kumar s/o Kalu Ram
INS India, Dalhousie Road
New Delhi
3. Mukesh Saxena s/o Rajesh Saxena
UDC, AF Canteen Race Course,
New Delhi
4. T.S. Chauhan s/o D.S. Chauhan
Golden Ram CSD
Meerut City (UP)

..Applicants

(By Advocates: Shri GD Bhandari and Shri SN Anand)

Versus

1. Shri Shekhar Dutt
Secretary, Ministry of Defence
South Block, New Delhi
2. Lt. Gen. Sudhir Sharma
AVSM VSM
Quarter Master General
QMG Branch
Army Headquarters, New Delhi-1
3. Air Marshal J.N. Burma
AVSM VSM
AOA (Personnel)
Air Headquarters,
New Delhi-1
4. Cdr. V.K. Bhansali
Principal Director Personnel Services
Naval Headquarters
New Delhi

..Respondents

(By Advocates: Shri DS Mahendru and Shri MK Bhardwaj for
Shri AK Bhardwaj)

32

ORDER (ORAL)**Hon'ble Shri Shanker Raju, Member (J):**

Heard the parties.

2. Contempt is an instrument in the hands of the Tribunal or Courts to uphold the majesty of law and to keep intact the interest of justice. It is not a tool to settle scores or to unnecessarily entangle with an issue, which could have been, on being contentious, dealt with in a separate proceeding. It has to be ensured that whatever decision has been arrived at on judicial side is respected by its compliance in true letter and spirit.

3. In the above backdrop, an order passed by the Tribunal on 3.10.2005 in OA-2084/2004 took cognizance of the employees working in Unit Run Canteen (URC) on different wings of the Army pertaining to their service conditions for which in a decision of the Apex Court in **Union of India & others v. Mohd. Aslam**, AIR 2001 SC 526, they have been held to be the government servants for the purpose of jurisdiction before the Tribunal.

4. Accordingly, the stand of the respondents, which was that the service conditions at par with regular holder of civil posts cannot be *mutatis mutandis* extended to the employees of URC, relief no.1 has been turned down but while referring to Article 309 of the Constitution of India where under the proviso Legislature has been empowered to regulate the recruitment rules and conditions of service and being known mode of promulgating service conditions, the respondents were specifically asked as to what provisions of Constitution, rules or terms and conditions in question have been issued, on their silence, it

is observed that no rules have been promulgated under proviso to Article 309 of the Constitution, despite URC employees having been recognized as government servants.

5. Having regard to the backdrop that apart from DA, to which respondents have taken a plea of their limited funds, HRA, CCA, medical facilities, maternity leave and other service conditions at par with regular government servants were also sought. It was observed that the respondents are at liberty not to grant the same conditions to these employees as available to the regular employees of the Government but they have taken a conscious decision for granting various benefits as are available to other government servants. Such an exercise has been precluded by the Court itself. Accordingly, a direction issued to constitute a Committee immediately comprising three Joint Secretaries of the Ministry of Personnel, Department of Expenditure Ministry of Finance and Ministry of Defence to examine the terms and conditions of service of the employees of URC and thereafter these recommendations have to be considered by the Union of India and to issue appropriate rules, etc. under Article 309 of the Constitution.

6. When the aforesaid has not been complied with led to filing of the contempt petition.

7. During the course of pendency of CP, a compliance affidavit filed by the respondents transpires that a Committee was constituted consisting seven members. This has been objected to by learned counsel for applicants that once a thing has to be done in compliance in a particular manner, no other manner could have

en

been adopted and nothing precluded the respondents to have sought clarification from the Tribunal. Once the directions are clear, it cannot be circumvented by government orders.

8. The compliance shows an order passed by the respondents laying down service conditions by amending paragraph 18 whereby DA and other benefits have been denied to the applicants on the ground that as these employees are paid out of non-public funds, they are not entitled in a manner the recommendations of Committee were accepted on approval by respondents 1 & 2.

9. On 4.4.2007, an order passed by this Tribunal directed presence of respondents 1 & 2 with liberty to them to apply for exemption with valid reasons supplied through affidavit. In the course of deliberation, it has been *prima facie* concluded that the Tribunal is not satisfied with the compliance. Of course, the observation was provisional but on further opportunity a trial would have to ascertain the real intent.

10. In the light of above, Shri G.D. Bhandari, learned counsel for applicants states that synopsis and the documents now referred to and furnished to the court have taken him aback, as the same have not been served in advance to him.

11. Learned counsel has relied upon the three decisions of Apex Court in **Director of Education, Uttaranchal & others v. Ved Prakash Joshi & others**, (2005) 6 SCC 98, **E.T. Sunup v. C.A.N.S.S. Employees' Association & another**, (2004) 8 SCC 683 and in **Chandrabhaga Bai v. B.S. Patil**, (2004) 13 SCC 698 to contend that in the matter of contempt, what has to be complied with is the directions issued by the

Court in true letter and spirit. Any interpretation as a subservient or to circumvent the order of the Tribunal would be an illegality.

12. Learned counsel would contend that once the decision of the Tribunal has been upheld by the High Court and SLP preferred against the same is also dismissed by the Apex Court, the issue has attained finality. For want of implementation or some practical difficulty posed before the respondents, nothing precluded them from seeking clarification from the Tribunal. Having not done so, the compliance whereby, despite findings in **Mohd. Aslam's** case (supra) that URCs employees are paid out of consolidated funds, an observation that the URC employees are funded from non-public funds, runs not only in the face of directions of Apex Court but also the order of Tribunal.

13. Learned counsel would further contend that once the Committee was to be constituted by three Joint Secretaries, any addition of the other members without seeking any prior approval or permission of the Court is not apt in accordance with law.

14. Learned counsel states that the presence of respondents 1 & 2 has been rightly called and as they are found *prima facie* guilty of the contempt, as no valid justification has come forth to show their bonafide in complying with the directions, he insists on rejection of the request for exemption of presence of respondents 1 & 2 and also fervently insists on to proceed with contempt proceedings to hold respondents 1 & 2 guilty of the charge.

15. On the other hand, Shri D.S. Mahendru, learned counsel for respondents vehemently opposed the contentions and stated that

once the direction was issued to constitute a Committee, any addition of the members, who are officers concerned in bringing out service conditions, i.e., persons belonging to Armed Forces, their presence would have certainly assisted the Joint Secretaries in arriving at a finding.

16. Learned counsel would contend that once the findings have been arrived at by the Committee, respondents 1 & 2 are only directed to consider the same and to pass an order, which they have done. In this light, learned counsel states that even if there is an illegality, it is done by the members of the Committee and only they are liable to be proceeded in contempt proceedings.

17. In the synopsis produced before us, a reference has been made to an order dated 15.9.2003 in SLP (Civil) CC Nos. 7845-7847/2003 whereby in a subsequent proceeding in **Union of India & others v. Jogdan Charan & others**, the decision in **Mohd. Aslam's** case (supra) has been referred to a 3-Judge Bench.

18. In the light of above, it is stated that there is no wilful contempt on part of the respondents and in the event if there is some irregularity found out in methodology adopted by the respondents, they are ready to correct it and they are agreeable to meticulous compliance of the directions in true letter and spirit.

19. On carefully considering the rival contentions of the parties and perusing the material placed on record, we are of the view that no individual person is above the law. If a person acts in a manner, which is subservient or to circumvent the order of the Court, he is nothing but

an obstruction in dispensation of justice. Interest of justice would be safeguarded only when it is ensured that no miscarriage of justice takes place. The directions of the Tribunal issued in the present case were very clear and explicit on the face of it. By rejecting the request of the applicants in OA to be treated in service conditions at par with regular employees, cognizance of Article 309 of the Constitution was taken in the backdrop that URC employees have been declared to be government servants only for the purpose of jurisdiction before the Tribunal but this has left this issue settled for ever that URC employees have been paid out of consolidated fund. The Committee, which was constituted, was restricted to three Joint Secretaries of the Ministry of Personnel, Department of Expenditure Ministry of Finance and Ministry of Defence. There was no whisper as to any other member being inducted in the Committee. By inducting seven members, i.e., four over and above the initial constitution of the Committee without seeking any clarification or leave of the Court is an example of the jurisdiction exceeded by the respondents in utter defiance to the order of the Tribunal. The Tribunal when directs in a particular manner that the Committee is to be constituted, no other manner or methodology could have been adopted by the respondents. In such view of the matter, we do not advert to the constitution of the Committee.

20. As to whether this constituted a separate cause of action to challenge the findings of the Committee, what we have to ensure before us in contempt is dispensation of justice and to prevent miscarriage of justice, which could not have been done if we advert to the constitution and the findings of the Committee arrived.

21. As regards amending paragraph 18 as shown to us by the respondents as a compliance of the order, once the very purpose of Committee gets frustrated, as it is on the premise and assumptions that employees of URC are not funded out of consolidated funds but are paid out of non-public funds, the applicability and the context in which the service conditions at par with other employees of the Government are to be considered, the very exception of Committee's consideration was faulty one, *dehors* the rules and law declared by the Tribunal.

22. In such view of the matter, the subsequent approval of respondents 1 & 2 to the recommendations of the Committee, which has over-exceeded its jurisdiction and has not at all considered the decision of the Tribunal and in total oblivion of the order passed on their *ipsi dixit* through recommendations cannot be countenanced in law and it is in derogation of the directions issued by the Tribunal.

23. Insofar as role of respondents 1 & 2 is concerned, it is trite that we have three wings in our Constitution. The Executive, being a separate wing, has to act harmoniously and is duty bound to respect the orders passed by the judicial forum. A public functionary may act on administrative side or on a quasi-judicial side as well but once the discretion is vested in the administrative authority, it has to be seen that this discretion is not exercised on *ipsi dixit* and without any control. A judicial exercise of the discretion would not be possible if all the facts and relevant considerations are not gone into and weigh properly against and for the interest in issue. If it is an order passed approving the recommendations of Committee oblivious of the fact that such recommendations of the Committee were itself in

derogation of the decision of the Tribunal as well as the decision of the Apex court, it is the duty of respondents 1 & 2, before approval is given, to meticulously consider and examine the background facts, which led to the recommendations of the Committee. If the prescribed procedure is not followed, there has been a total non-application of mind to the facts surrounded and attendant to the order passed by the Tribunal. As such they have not discharged their role as public functionaries, which cannot be countenanced in the light of the decision of the Apex Court in **Union of India & others v. Kuleep Singh**, (2004) 2 SCC 590.

24. Now the issue of their presence and exemption. The only liberty accorded to them by the Tribunal on 4.4.2007 is to apply for exemption on valid reasons supplied through affidavit. We are very sorry to say that what to talk of valid reasons, even rationale or logical reasons are missing in the affidavit. There is no explanation, which is worth consideration to persuade us, to exempt the presence of respondents 1 & 2. However, contempt is between the contemnor(s) and the Court. Our endeavor is to prevent miscarriage of justice and to keep the interests of the parties as per rule of law. By punishing the contemnors, this exercise would not be complete rather it would aggravate the inter-relationship between the employee and the employer, more particularly when the employers are in position to bargain. In such view of the matter, though conscious of the fact that whatever has been done by the respondents is *dehors* our directions, yet we accord the respondents an opportunity to correct themselves and review in the circumstances, which could be by reconsidering the entire matter in a very logical, rationale and just manner. Our

no

observations made above would be a binding factor while arriving at such reconsideration.

25. The aforesaid does not imply that we are letting respondents 1 & 2 of the hook or they are not liable to be proceeded against in contempt. What we are doing is to keep their fate in abeyance with an opportunity to them to meticulously comply with our directions in true letter and spirit and if they fail, they are liable to be proceeded against in accordance with law and rules.

26. In the result, for the foregoing reasons, we dispose of this CP at present, exempt the presence of respondents 1 & 2 and discharge the notices issued against them. However, they are directed to reconstitute a Committee strictly in accordance with our directions dated 3.10.2005 and thereafter consider grant of conditions of service. In such an event, respondents 1 & 2 would assume the role of public functionaries as defined by us above. The aforesaid exercise of constituting the Committee and according approval would be complete within a period of three months from the date of receipt of a copy of this order. In the event, the compliance is not apt in law and not in true letter and spirit as per our directions, it will be open for the applicants to revive the present CP and insist on the dictate of our order dated 4.4.2007. No costs.



(Neena Ranjan)
Member (A)

/sunil/



(Shanker Raju)
Member (J)