

25

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

CP No. 276/2004

&

CA No. 282/2004

In

OA NO. 1349/2004

New Delhi, this the 24th day of November, 2004

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)**

CP No. 276/2004

Bhoop Singh s/o Shri Shobe Ram
373, Housing Colony,
Sonepat (Haryana)

...petitioner

-versus-

K. Srinivasan
Engineer-in-Chief (PWD)
Govt. of NCT of Delhi,
Curzon Road Barracks,
New Delhi – 110 001.

...Respondent

CP No. 282/2004

1. Shri Surinder Singh
S/o Shri Devi Singh
F-23, Nawada Housing Complex,
Kakrola Mor,
New Delhi – 110 059.

2. Shri Subhash Chander
s/o Shri U.B. Giri,
G-139, Pushkar Enclave,
Paschim Vihar,
New Delhi – 110 063.

3. Shri Kaushlesh Kumar
s/o Shri Aradishwar Prasad,
R/o 222, Sector 5, Part VI,
Gurgaon – 122001 (Haryana).
...Petitioners

1. Mr. Prabhakar Rao
Controller General of Accounts,
Ministry of Finance,
Khan Market,
New Delhi - 110 001.

2. Shri V.P. Gupt,
Deputy Secretary (Finance),
Finance Accounts Department,
Govt. of NCT of Delhi,
4th Floor, A Wing, Delhi Secretariat,
New Delhi.

3. Shri A.K. Gupta,
Chief Engineer,
Irrigation & Flood Department,
Govt. of NCT of Delhi,
4th Floor, ISBT Bldg.,
Kashmere Gate, Delhi. ...Respondents

Appearance: Shri V.K. Rao, counsel for applicants.

Mrs. Avnish Ahlawat, counsel for Govt. of NCT of Delhi.

Shri H.K. Gangwani, counsel of UOI.

ORDER

By Shri Shanker Raju, Member (J):

Applicants preferred OA No. 1349/2004 impugning their posting on repatriation to Ministry of Urban Development outside Delhi effected vide order dated 29.04.2004.

2. By an order dated 27.05.2004, the following interim relief was accorded:-

"Let the matter be heard on interim relief on 8.6.2004 by which date the respondents shall be filing order as passed by the respondents vide Annexure A-1 in respect of applicant no. 1 and other such orders passed in respect of remaining seven applicants, copies of which

are not available on record, shall be kept in abeyance. Issue Dasti".

3. Meanwhile as the Govt. of NCT was not made a party, on filing MA No. 2233/2004, it was impleaded as respondent.

4. Learned counsel of the applicants Shri V.K. Rao presses CPs contending that though the respondents in respect of one Shri Surinder Singh kept the orders in abeyance vide order dated 18.6.2004, yet by order dated 9.8.2004 applicants had been repatriated and had been directed to report to the Ministry of Urban Development, Nirman Bhawan, New Delhi. In this view of the matter, it is stated that when the order has been kept in abeyance, the intention of the Tribunal was to grant more than status quo and those who are yet to be relieved have to stay in the Govt. of NCT and for applicant Shri Bhoop Singh, who was earlier relieved, is deemed to have been retained at Delhi and could not have been repatriated to the Ministry of Urban Development.

5. On the other hand, Govt. of India represented through Shri H.K. Gangwani filed the reply and referred to two letters addressed to the Govt. of NCT on 26.08.2004 and 21.09.2004 and stated that contempt has arisen because Delhi Govt. had decided to relieve the applicants. As the Controller General of Accounts is not a party to the action taken by Delhi Govt. vide its communication dated 9.8.2004, they may be discharged. However, it is stated that Controller General of Accounts had written two letters to the Chief Secretary, Delhi Government to take appropriate action to get them discharged from contempt.

6. Mrs. Avnish Ahlawat, representing the Govt. of NCT, contends that the Apex Court has ~~laid~~ at rest the controversy of repatriation of Accountants from other Ministries and Departments to the Govt. of NCT, which does not have their own Organized Accounts Cadre but after the Accounts Cadre had come into being, their own officers are to be posted and by referring to an order of the Apex Court rendered on 3.1.2001 in Government of NCT vs. All India Central Civil Accounts JAOs Association, (CA No. 2971/97), where setting aside the order of the Tribunal dated 2.8.1996, respondent no. 8 had been accorded liberty to take appropriate steps to give effect to the proposal made by the appellants for absorption of Delhi Administration Accounts Service (DASS).

7. In the above conspectus, it is stated that in another OA 39/02 (Udal Singh vs. UOI) decided on 21.1.2002, directions have been issued to continue the applicants in DASS till Govt. of NCT takes a decision.

8. In the above conspectus, it is stated that a meeting between the representatives of the Govt. of India and Govt. of NCT had taken place in pursuance of directions of the Apex court as well as in OA 705/2002 whereby it has been decided to repatriate 49 deputationists in a specified time schedule and this has to be done each year in the month of May. In 2004 and 2005, 12 officers are to be repatriated; in 2006, 9 officers; in 2007 and 2008, 8 officers each, are to be repatriated.

9. In this conspectus, learned counsel of the applicants has referred to two orders passed on 14.5.2004 and 18.5.2004 respectively in case of Kaushlesh Kumar whereby Govt. of NCT in

the light of decision taken in the meeting on 8.12.2003 repatriated the applicants to the Ministry of Urban Development for their further posting.

10. Mrs. Avnish Ahlawat contends that in the OA, the grievance of the applicants is directed not against the repatriation, which has attained finality after the decision of the Apex Court, but their posting on repatriation by the Govt. of India. In this view of the matter, referring to the relief clause in paras 8 & 9, it is stated that the applicants had prayed for cancellation of transfer outside Delhi and their interim prayer was for restraining them from reliving from Delhi.

11. Mrs. Avhlawat states that one of the applicants Shri Bhoop Singh had already been repatriated on 29.4.2004 and had drawn payment of transfer grant. As such, keeping the orders in abeyance will not affect his case.

12. In nutshell, what has been contended is that no contempt has ever been committed by the respondents as they have all respect to the Tribunal.

13. We have carefully considered the rival contentions of the parties and perused the material on record.

14. Contumacious and willful disobedience is one where respondents, despite orders of the Court, without any un-ambiguity act in derogation and in that event willfully and intentionally avoids implementation of the directions. However, where the action of the respondents is bonafide, the same would not amount to contempt.

15. Apex court in Suresh Chand Poddar vs Dhani Ram, 2002(1) SC (SLJ) 150 held that it is only in deserving cases the power of contempt is to be exercised. No doubt, the contempt proceedings are intended to protect the public whose interest would be very much affected by the act or conduct of any party and this also lowers the authority of the Court and would be a loss of confidence in the people and would be a breach of trust to the administration of justice. However, before exercising the powers, it has to be ensured that there is willful and intentional disobedience.

16. In the above conspectus, we find that when the applicants have assailed in the OA their posting by the Central Government outside Delhi, the orders passed have been kept in abeyance. This implies that the intention of the court was that the applicants could not be posted outside Delhi and the prerogative of posting is with the Central Government.

17. In so far as order passed by the Govt. of NCT is concerned, this is not in any manner contumacious because the issue of repatriation of Central Government employees from Govt. of NCT as the Govt. of NCT has its own organized Accounts Cadre is no more res integra after the decision of the Apex Court, Tribunal's directions and after decision in the meeting held between the Govt. of NCT and Govt. of India. The Govt. of NCT has implemented the directions in a phased manner and reliving of the applicants is a consequence of it. It is not as a result of an order passed assailed in the OA. The facts and documents brought on record substantiate the aforesaid plea.

18. Be that as it may, this Tribunal has no intention to issue a direction, which would come in the way of implementation of the directions of the Apex Court, which are binding under Article 141 of the Constitution of India.

19. In our considered view, it is for the Government of India, which is now shifting its responsibility on Govt. of NCT to have complied with this order by retaining the applicants at Delhi as repatriation has to be given effect to as per the directions of the Court.

20. With the above conclusion, we do not find any willful contempt on part of the respondents. Accordingly, both the CPs are dismissed and notices are discharged.

21. Let this matter be listed before an appropriate Single Bench on 06.12.2004 for further proceedings.

(S. A. Singh)
Member (A)

/na/

(Shanker Raju)
Member (J)